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## TITLE 7—AGRICULTURE

### Subtitle A—Office of the Secretary of Agriculture

PART 6—IMPORT QUOTAS AND FEES

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AUTHORITY: §§ 6.1 to 6.9 issued under R. S. 161, sec. 3, 62 Stat. 1248, as amended; 5 U. S. C. 22, 7 U. S. C. Sup. 624.

§ 6.1 *Basis and purpose.* Section 22 of the Agricultural Adjustment Act (of 1933), as amended by the act of June 28, 1950, 64 Stat. 261, and the act of June 16, 1951 (Pub. Law No. 50 82d Cong.), (hereinafter referred to as "section 22"), requires the Secretary of Agriculture (hereinafter referred to as the "Secretary"), to advise the President whenever he has reason to believe that any articles are being, or are practically certain to be, imported into the United States under such conditions and in quantities as to tend to render ineffective or materially interfere with any program undertaken by the Department of Agriculture, or any agency operating under its direction, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which such a program is being undertaken. If the President agrees that there is reason for such belief, the President is directed to cause an immediate investigation to be made by the United States Tariff Commission. Executive Order No. 7233, issued November 23, 1935, among other things, provides that the Secretary may have representatives at hearings held by the United States Tariff Commission, who shall have the privilege of examining witnesses. It is the purpose of this regulation to prescribe the policies and procedures of the Department of Agriculture in implementation of section 22 and Executive Order No. 7233.

§ 6.2 *Responsibility for actions under section 22.* The primary responsibility within the Department of Agriculture for action on matters for which the Secretary is responsible under section 22 is assigned to the Administrator, Production and Marketing Administration (hereinafter referred to as the "Administrator"), but the Office of Foreign Agricultural Relations, and other offices, agencies, and bureaus of the Department whose activities will be affected by any action under section 22, shall be consulted by the Administrator in discharging his responsibility hereunder.

§ 6.3 *Requests by interested persons.* Requests for action under section 22 should be submitted, in duplicate, to the Administrator, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C. Such requests shall include a statement of the reasons why action would be warranted under section 22 and such supporting information and data as are available to the person making the request.

§ 6.4 *Investigations.* The Administrator shall cause an investigation to be made whenever, based upon requests by interested persons submitted pursuant to § 6.3 or upon other information available to him, he determines that there is reasonable ground to believe that the imposition of import quotas or fees under section 22 may be warranted, or that the termination or modification of import quotas or fees in effect under section 22 may be warranted.

§ 6.5 *Hearings.* The Administrator is authorized to provide for such hearings, in Washington, D. C., or elsewhere, as he determines are necessary to discharge the responsibility vested in him by §§ 6.2 and 6.4. Such hearings shall be conducted by representatives designated for the purpose by the Administrator; shall be preceded by such public notice as, in the opinion of the Administrator, will afford interested persons a reasonable opportunity to attend and present information; and minutes of the proceedings at such hearings shall be obtained. Hearings shall be informal and technical rules of evidence shall not apply. Such hearings are for the purpose of obtaining information for the assist-

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FEDERAL REGISTER

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ance of the Secretary. However, in discharging his responsibilities under section 22, the Secretary is not restricted to the information adduced at the hearings.

§ 6.6 *Submission of recommendations.* (a) The Administrator shall make a report to the Secretary upon the completion of each investigation made by him pursuant to § 6.4. The report shall summarize the information disclosed by the investigation, shall contain the recommendations of the Administrator, and, in case action under section 22 is recommended, shall be accompanied by a suggested letter from the Secretary to the President recommending that the United States Tariff Commission be directed to conduct an investigation. Such report shall be submitted to the Office of Foreign Agricultural Relations and other offices, agencies, and bureaus of the Department whose activities would be affected for concurrence or comment.

(b) Only if the Secretary has reason to believe, upon the basis of the information available to him, that import quotas or fees should be imposed, modified, or terminated, will the Secretary recommend to the President that the President direct the United States Tariff Commission to conduct an investigation under section 22.

§ 6.7 *Representation at Tariff Commission hearings.* The Department of Agriculture shall be represented at all hearings conducted by the United States Tariff Commission under section 22 by persons designated by the Administrator, assisted by a representative of the Office of Foreign Agricultural Relations and a representative of the Office of the Solicitor. Such representatives shall present the recommendations of the Department of Agriculture, shall submit such information and data in support thereof as are available and shall exercise the right of examining other witnesses which is granted to the Secretary.

§ 6.8 *Emergency proceedings.* (a) Section 8 (a) of the act of June 16, 1951, supra, requires the President to take action at the earliest possible date, and in any event not more than 25 calendar days after the submission of the case to the Tariff Commission, in any case where the Secretary of Agriculture determines and reports to the President and to the Tariff Commission with regard to any commodity that due to the perishability of the commodity a condition exists requiring emergency treatment. In any case in which a condition is alleged to exist requiring such emergency treatment, the Administrator shall expedite consideration of the matter to determine (1) whether the condition warrants action under section 22, and (2) whether emergency treatment is required. The procedure for handling such matters shall be the same as for other section 22 matters but priority shall be given to those which may involve emergency treatment.

(b) If emergency treatment is to be recommended, the Administrator's report submitted pursuant to § 6.6 shall discuss the condition which requires emergency treatment, and the suggested letter from the Secretary to the President shall include a recommendation to the President whether such emergency treatment should take the form of action by the President prior to receiving the recommendations of the Tariff Commission or whether such action may appropriately be withheld until such recommendations are received. A suggested letter from the Secretary to the Tariff Commission, informing it of the recommendations made to the President, shall also accompany the Administrator's report to the Secretary, in those cases in which emergency treatment is recommended.

§ 6.9 *Information.* Persons desiring information from the Department of Agriculture regarding section 22 or any action with respect thereto should address such inquiries to the Administrator, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C.

Issued this 12th day of September 1951.

[SEAL] CHARLES F. BRANNAN,
*Secretary of Agriculture.*

[F. R. Doc. 51-11196; Filed, Sept. 14, 1951; 8:53 a. m.]

## Chapter I—Production and Marketing Administration (Standards, Inspections, Marketing Practices), Department of Agriculture

### Subchapter F—Insecticides

[Interpretation 19]

### PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

#### LABELING OF HOUSEHOLD INSECTICIDES CONTAINING CHLORDANE

Formulations of technical chlordane have been available to the public as household insecticides since 1946. Certain formulations when properly used have been found to be unusually effective against roaches and certain other crawling insect pests of the household. However, this chemical is a known poison and must be handled with care. Recent experimental findings have tended to emphasize the chronic or long term hazards from repeated small exposures to chlordane either orally, by direct contact, or by breathing its vapors. In order to assure safety from chronic poisoning and yet continue to take advantage of this effective insecticide, it is necessary to place certain limitations, not only on the formulations that may properly be used, but also on the methods of application.

Therefore, pursuant to the authority vested in me by § 162.3 of the regulation (7 CFR 162.3) under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U. S. C. 135–135k), Interpretation 19 with respect to the labeling of household insecticides containing chlordane is hereby issued, as § 162.117 of Part 162, Title 7, Code of Federal Regulations, to read as follows:

§ 162.117 *Interpretation with respect to labeling of household insecticides containing chlordane.* In determining whether household insecticides containing chlordane comply with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act, the following principles will apply:

(a) *Limitation as to intended use.* Products containing chlordane for household use will not be deemed to comply with the act unless their labeling shows they are intended for use only against roaches, waterbugs, silverfish, ants, carpet beetles or brown dog ticks in premises, or such other insects as the Director may find to be controllable within the limitations of formulations and directions for use prescribed herein.

(b) *Limitation as to formulations.* (1) Most household insecticides containing chlordane fall into three general classes:

(i) Petroleum distillate (kerosene) solutions which may or may not contain limited quantities of other chlorinated hydrocarbon insecticides and certain paralytic agents.

(ii) Water emulsions which do not ordinarily contain any other insecticidal ingredient and which are to be used undiluted, or emulsifiable concentrates to be used after suitable dilution with water.

(iii) Dry powder formulations based on talc, pyrophyllite or other suitable

diluents which sometimes contain limited quantities of other insecticides.

In addition, there are a few other special products which contain chlordane.

(2) Products containing chlordane for residual household use must contain sufficient chlordane, alone or in combination with other toxicants such as DDT, to be fully effective as residual insecticides against the insects indicated on their labeling in accordance with paragraph (a) of this section.

(3) Petroleum distillate spray formulations frequently contain 2 percent of chlordane without any other residual toxicant. Under no circumstances shall the chlordane content exceed 2.5 percent by weight. If other insecticidal ingredients are present which have either acute or chronic poisoning characteristics, the amount of chlordane shall be reduced in proper proportion.

(4) Water emulsion formulations when diluted for use shall not contain more than 2.5 percent of chlordane by weight. Products containing less than 2 percent of chlordane by weight may not be adequately effective. No other toxicants or other paralytic agents are ordinarily present in these products, but if other insecticidal ingredients are present which have either acute or chronic poisoning characteristics, the amount of chlordane shall be reduced in proper proportion.

(5) Dry powder formulations of chlordane based on talc, pyrophyllite or other suitable dry diluents, under no circumstances shall contain more than 5 percent of chlordane by weight. If other insecticidal ingredients are present which have either acute or chronic poisoning characteristics, the amount of chlordane shall be reduced in proper proportion. If no other insecticidal toxicants are present, formulations containing less than 3 percent of chlordane by weight may not be effective.

(c) *Requirements as to directions for use*—(1) *General.* The directions for liquid formulations shall under all circumstances provide for the use of a coarse, wet spray or for application by the use of a paint brush or similar means. Directions for liquid formulations, dry powders, and any other properly formulated mixture which contains chlordane, shall prescribe application on a "spot" basis to the cracks, surface, or other areas where the insects have been seen resting, running or hiding. There shall be no directions for general applications to large areas of walls, floors, shelving, cabinets, ceilings, or other room surfaces. There shall be no directions for spraying in the air or for the use of fine mist sprays of any kind such as those commonly used for flies and mosquitoes. There shall be no directions for treatment of clothing, bedding, beds, mattresses, pillows or furniture and no claims or directions for bedbugs or fabric pests in furniture. There shall be no claims or directions which might lead to contamination of food. There shall be no claims for safety or non-toxicity.

(2) *Particular insects*—(i) *Roaches.* The directions for control of roaches shall provide for thorough treatment of infested cracks and other hiding or resting places, and may provide for application of the insecticide to a limited extent on some exposed surfaces where roaches will crawl over it when they come out of hiding. The directions shall indicate that the application should be repeated as often as necessary to maintain effective control.

(ii) *Silverfish.* The directions shall be the same as directions for roaches except that emphasis shall be given to treatment of base boards, areas behind shelving, bookcases and storage areas.

(iii) *Ants.* The directions for control of ants shall be similar to those for roaches. Instead of treating hiding places, however, emphasis shall be placed on the treatment of ant trails and areas around door sills and window frames where the pests may enter the premises. The directions shall also indicate that it is frequently desirable to treat the openings around water pipes, heat ducts, electrical outlets and baseboards where ants may come out into rooms from wall spaces and partitions, and that the application should be repeated as often as necessary to maintain effective control.

(iv) *Brown dog ticks in premises.* The directions for the control of brown dog ticks in premises shall be similar to those given for roaches but emphasis shall be placed on repeated treatments around baseboards, window and door frames, wall cracks, sleeping quarters of household pets and localized areas of floors and floor coverings. The directions shall indicate that the frequency and extent of applications required will depend upon the source and intensity of the infestation. The directions shall indicate that fresh bedding should be placed in animal quarters following treatment. There shall be a specific warning not to treat pets or other animals with these products.

(v) *Carpet beetles in premises.* Directions for the control of carpet beetles in premises may provide for localized applications to areas of the floor and baseboards and for working the powder or liquid into cracks and under carpets where these insects may be found. Treatment of areas on floors, baseboards, and shelves of closets may also be indicated and repeated applications specified. However, no directions shall be given for widespread or general treatments to large areas of the carpeting, floors, walls, ceilings or other surfaces.

(d) *Ingredient statement provisions.* The following forms of ingredient statements would fulfill the requirements of the act as to ingredient statements for the three general classes of formulations of household insecticides containing chlordane. These suggested forms of statements assume that chlordane is the only toxicant present and that petroleum distillate in the form of deodorized kerosene is the only other active ingredient.

(1) *Kerosene solutions*—

| (i) Active ingredients: | Percent |
|---|---|
| Technical chlordane [1] | -- |
| Petroleum distillate | -- |
| Total | 100 |

[1] Equivalent to ____ percent octachloro-4,7-methano tetrahydroindane and ____ percent of related compounds.

| | Percent |
|---|---|
| (ii) Active ingredients | 100 |
| Petroleum distillate. | |
| Technical chlordane.[2] | |

[2] Consists of octachloro-4,7-methano tetrahydroindane and related compounds.

(2) *Water emulsions or dry powders.*

| (i) Active ingredients: | Percent |
|---|---|
| Technical chlordane [3] | -- |
| (ii) Inert ingredients | -- |
| Total | 100 |

[3] Equivalent to ____ percent octachloro-4,7-methano tetrahydroindane and ____ percent of related compounds.

The correct percentages should be given in the blank spaces and the sum of the percentage of octachloro-4,7-methano tetrahydroindane and the percentage of related compounds stated should be equal to the percentage of technical chlordane in the product.

(e) *Precautionary labeling provisions.* The following precautionary statements are acceptable under the act:

(1) Petroleum distillate solutions or water emulsions containing 2.5 percent chlordane or less:

*Caution.* Repeated or prolonged contact with skin can cause toxic symptoms. Avoid excessive inhalation or skin contact. In case of spillage on skin, wash with soap and water. Avoid contamination of feed and foodstuffs. Harmful if swallowed. Keep out of the reach of children.

*Fire hazard.* (For use on petroleum distillate solutions only.)

*Caution.* Do not spray into or near fire or open flame. Do not smoke while spraying.

(2) Dust formulations containing 5 percent chlordane or less:

*Caution.* Avoid excessive inhalation. Avoid contamination of feed and foodstuffs. Keep out of the reach of children.

This interpretation shall supersede the provisions of Interpretation 15 (7 CFR 162.113) on labeling of mineral oil-pyrethrum and similar contact household fly sprays and of Interpretation 18 (7 CFR 162.116) on caution, warning, and antidote statements, insofar as such provisions relate to household insecticides containing chlordane.

*Effective date.* According to reliable information, the principal danger to humans to be anticipated from the use of household insecticides containing chlordane is the slow development of chronic injury over a period of several years due to repeated absorption through the skin or breathing of spray mist, dust or vapors arising from surfaces having a residue of chlordane. Consequently, immediate disruption of the marketing of those products is not imperative and the foregoing interpretation is made effective one year after publication in the FEDERAL REGISTER as to all household insecticides containing chlordane, and the containers, packaging and labeling of such insecticides, which were prepared prior to the date of such publication. The foregoing interpretation is made effective upon publication in the FEDERAL REGISTER as to all household insecticides containing chlordane, and the containers, packaging and

labeling of such insecticides, which are prepared after such publication.

(Sec. 6, 61 Stat. 168; 7 U. S. C. Sup. 135d)

Done at Washington, D. C., this 11th day of September 1951.

[SEAL] H. E. REED,
*Director, Livestock Branch, Production and Marketing Administration.*

[F. R. Doc. 51-11192; Filed, Sept. 14, 1951; 8:53 a. m.]

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## Chapter VII—Production and Marketing Administration (Agricultural Adjustment), Department of Agriculture

[1023 (Burley and Flue-52)-3]

## PART 725—BURLEY AND FLUE-CURED TOBACCO

### MARKETING QUOTA REGULATIONS, BURLEY AND FLUE-CURED TOBACCO, 1952-53 MARKETING YEAR

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ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

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AUTHORITY: §§ 725.311 to 725.328 issued under sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interprets or applies secs. 301, 313, 363, 52 Stat. 38, 47, 63, as amended; 7 U. S. C. 1301, 1313, 1363.

GENERAL

§ 725.311 *Basis and purposes.* The regulations contained in §§ 725.311 to 725.328, are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of 1952 farm acreage allotments and normal yields for Burley and flue-cured tobacco. The purpose of the regulations in §§ 725.311 to 725.328 is to provide the procedure for allocating, on an acreage basis, the national marketing quota for Burley and flue-cured tobacco for the 1952-53 marketing year among farms and for determining normal yields. Prior to preparing the regulations in §§ 725.311 to 725.328, public notice (16 F. R. 6625) (16 F. R. 6777) was given in accordance with the Administrative Procedure Act (60 Stat. 237). The data, views, and recommendations pertaining to the regulations in §§ 725.311 to 725.328, which were submitted have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended.

§ 725.312 *Definitions.* As used in §§ 725.311 to 725.328, and in all instructions, forms, and documents in connection therewith the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) *Committees.* (1) "Community committee" means the group of persons elected within a community as the community committee of the Production and Marketing Administration to assist in administering the Production and Marketing Administration programs within the community.

(2) "County committee" means the group of persons elected within a county as the county committee of the Production and Marketing Administration to assist in administering the Production and Marketing Administration programs within the county.

(3) "State committee" means the group of persons designated as the State committee of the Production and Marketing Administration, charged with the responsibility of administering Production and Marketing Administration programs within the State.

(b) *Farm.* "Farm" means all adjacent or nearby farm land under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farm land which the county committee, in accordance with instructions issued by the Assistant Administrator for Production, Production and Marketing Administration, determines is operated by the same person as part of the same unit with respect to the rotation of crops and with workstock, farm machinery, and labor substantially separate from that for any other lands; and

(2) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops.

A farm shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county in which the major portion of the farm is located.

(c) *New farm.* "New farm" means a farm on which tobacco will be produced in 1952 for the first time since 1946.

(d) *Old farm.* "Old farm" means a farm on which tobacco was produced in one or more of the five years 1947 through 1951.

(e) *Cropland.* "Cropland" means farm land which in 1951 was tilled or was in regular crop rotation, excluding (1) bearing orchards and vineyards (except the acreage of cropland therein), (2) plowable noncrop open pasture, and (3) any land which constitutes or will constitute, if tillage is continued, a wind erosion hazard to the community.

(f) *Community cropland factor.* "Community cropland factor" means that percentage determined by dividing the total cropland for all old farms in the community in 1951 into the total of the 1951 tobacco acreage allotment for such old farms: *Provided*, That (1) if it is determined that the cropland factors for all communities in the county are substantially the same, the county committee, with the approval of the State committee, may consider the entire county as one community, and (2) if there is only one farm in the county on which tobacco is grown, the community cropland factor of the nearest community in which tobacco is grown shall be used in determining the acreage indicated by cropland.

(g) *Acreage indicated by cropland.* "Acreage indicated by cropland" means that acreage determined by multiplying the number of acres of cropland in the farm by the community cropland factor.

(h) *Operator.* "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(i) *Person.* "Person" means an individual, partnership, association, corporation, estate or trust or other business enterprise or other legal entity, and whenever applicable, a State, a political subdivision of a State, or any agency thereof.

(j) *Tobacco.* "Tobacco" means Burley tobacco, type 31, or flue-cured tobacco types 11, 12, 13 and 14, as classified in Service and Regulatory Announcement No. 118 (7 CFR Part 30) of the Bureau of Agricultural Economics of the United States Department of Agriculture, or both, as indicated by the context.

Any tobacco that has the same characteristics, and corresponding qualities, colors, and lengths as either Burley or flue-cured tobacco shall be considered respectively either Burley or flue-cured tobacco regardless of any factors of historical or geographical nature which cannot be determined by examination of the tobacco.

(k) *Acre of tobacco.* "Acre of tobacco" means 43,560 square feet of land devoted to tobacco by being uniformly covered with tobacco plants notwithstanding that the width of the rows of tobacco may vary from the width of rows which are customary for the kind of tobacco involved and without regard to interplanted crops.

§ 725.313 *Extent of calculations and rules of fractions.* All acreage allotments shall be rounded to the nearest one-tenth acre. Fractions of fifty-one thousandths of an acre or more shall be rounded upward, and fractions of five-

hundredths of an acre or less shall be dropped. For example 1.051 would be 1.1 and 1.050 would be 1.0.

§ 725.314 *Instructions and forms.* The Director, Tobacco Branch, Production and Marketing Administration, shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Assistant Administrator for Production, Production and Marketing Administration.

§ 725.315 *Applicability of §§ 725.311 to 725.328.* Sections 725.311 to 725.328 shall govern the establishment of farm acreage allotments and normal yields for tobacco in connection with farm marketing quotas for the marketing year beginning October 1, 1952, in the case of Burley tobacco, and July 1, 1952, in the case of flue-cured tobacco.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR OLD FARMS

§ 725.316 *Determination of 1952 preliminary acreage allotments for old farms.* The preliminary acreage allotment for an old farm shall be the 1951 allotment with the following exceptions:

(a) If the acreage of tobacco harvested on the farm in each of the three years 1949–51 was less than 75 percent of the farm acreage allotment for each of such years, the preliminary allotment shall be the larger of (1) the largest acreage of tobacco harvested on the farm in any one of such three years, or (2) the average acreage of tobacco harvested on the farm in the five years 1947–51: *Provided,* That any such preliminary allotment shall not exceed the 1951 allotment for such farm or be less than 0.1 acre.

(b) If the county committee determines that failure to harvest as much as 75 percent of the acreage allotted to the farm during any one of the three years 1949–51 was due to service in the armed forces on the part of labor regularly engaged in producing tobacco on the farm prior to entry into the armed forces, the preliminary allotment for the farm shall be the 1951 allotment.

(c) If no 1951 allotment was established for the farm, the preliminary allotment shall be the smaller of (1) the average acreage of tobacco harvested on the farm in the five years 1947–51, or (2) the acreage obtained by multiplying the farm's average acreage for the five years 1947–51 by the ratio of the farm's actual yield to the 1950 county average yield: *Provided,* That such preliminary allotment shall not be less than 0.1 acre.

(d) If the acreage of tobacco harvested on the farm in 1951 exceeded the 1951 allotment by more than 10 percent, the preliminary allotment shall be the 1951 allotment plus the smaller of (1) one-fifth of the excess acreage, or (2) the acreage obtained by multiplying one-fifth of the excess acreage by the ratio of the farm's actual yield to the 1950 county average yield.

(e) The preliminary allotments determined under paragraph (c) or (d) of this section shall not exceed the smallest of (1) the acreage indicated by cropland (2) 20 percent of the acreage of cropland on the farm in the case of flue-cured tobacco, or (3) the acreage capacity of curing barns located on the farm and suitable for curing tobacco, which in the case of flue-cured tobacco shall be 3.5 acres per barn: *Provided,* That no preliminary allotment shall be reduced below the 1951 allotment because of these factors or be less than 0.1 acre.

(f) The preliminary allotment shall not exceed 80 percent of the acreage of cropland on the farm.

§ 725.317 *1952 Old farm tobacco acreage allotment.* The preliminary allotments calculated for all old farms in the State pursuant to § 725.316 shall be adjusted uniformly so that the total of such allotments plus the acreage available for adjusting acreage allotments for old farms pursuant to § 725.318 shall not exceed the State acreage allotment: *Provided,* That in the case of Burley tobacco any farm acreage allotment shall be increased if necessary to the smaller of (a) the 1951 allotment, or (b) 0.9 acre.

§ 725.318 *Adjustment of acreage allotments for old farms.* Notwithstanding the limitations contained in § 725.316, except paragraph (f) thereof, the farm acreage allotment for an old farm may be increased if the community and county committees find that such increase is necessary to establish an allotment for such farm which is fair and equitable in relation to the allotments for other old farms in the community, on the basis of the past acreage of tobacco, making due allowances for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The acreage available for increasing allotments under this section shall not exceed one half of one percent of the total acreage allotted to all tobacco farms in the State for the 1951–52 marketing year.

§ 725.319 *Reduction of acreage allotment for violation of the marketing quota regulations for a prior marketing year.* (a) If tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm which in fact was produced on a different farm, the acreage allotments established for both such farms for 1952 shall be reduced, as hereinafter provided, except that such reduction for any such farm shall not be made if the county committee determines that no person connected with such farm caused, aided, or acquiesced in such marketing.

(b) The operator of the farm shall furnish complete and accurate proof of the disposition of all tobacco produced on the farm at such time and in such manner as will insure payment of the penalty due at the time the tobacco is marketed and, in the event of failure for any reason to furnish such proof, the acreage allotment for the farm shall be reduced, except that if the farm operator establishes to the satisfaction of the county and State committees that failure to furnish such proof of disposition was unintentional on his part and that he could not reasonably have been expected to furnish accurate proof of disposition, reduction of the allotment will not be required if the failure to furnish proof of disposition is corrected and payment of all additional penalty is made.

(c) Any such reduction shall be made with respect to the 1952 farm acreage allotment, provided it can be made at least 30 days prior to the beginning of the normal planting season for the county in which the farm is located as determined by the State committee. If the reduction cannot be so made effective with respect to the 1952 allotment, such reduction shall be made with respect to the farm acreage allotment next established for the farm where the reduction can be made within the time specified above. This section shall not apply if the allotment for any prior year was reduced on account of the same violation.

(d) The amount of reduction in the 1952 allotment shall be that percentage which the amount of tobacco involved in the violation is of the respective farm marketing quota for the farm for the year in which the violation occurred. Where the amount of such tobacco involved in the violation equals or exceeds the amount of the farm marketing quota the amount of reduction shall be 100 percent. The amount of tobacco determined by the county committee to have been falsely identified or for which satisfactory proof of disposition has not been furnished shall be considered the amount of tobacco involved in the violation. If the actual production of tobacco on the farm is not known, the county committee shall estimate such actual production, taking into consideration the condition of the tobacco crop during production, if known, and the actual yield per acre of tobacco on other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar: *Provided,* That the estimate of such actual production of tobacco on the farm shall not exceed the harvested acreage of tobacco on the farm multiplied by the average actual yield on farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar. The actual yield of tobacco on the farm as so estimated by the county committee multiplied by the farm acreage allotment shall be considered the farm marketing quota for the purposes of this section. In determining the amount of tobacco for which satisfactory proof of disposition has not been shown in case the actual production of tobacco on the farm is not known, the amount of tobacco involved in the violation shall be deemed to be the actual production of tobacco on the farm, estimated as above, less the amount of tobacco for which satisfactory proof of disposition has been shown.

(e) If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied to that portion of the allotment for which a reduction is required under paragraph (a) or (b) of this section.

(f) If the farm involved in the violation has been divided prior to the reduc-

tion, the reduction shall be applied to the allotments for the divided farms as required under paragraphs (a) and (b) of this section.

§ 725.320 *Reallocation of allotments released from farms removed from agricultural production.* (a) The allotment determined or which would have been determined for any land which is removed from agricultural production for any purpose because of acquisition by any Federal, State, or other agency having a right of eminent domain shall be placed in a State pool and shall be available to the State committee for use in providing equitable allotments for farms owned or purchased by owners displaced because of acquisition of their farms by such agencies. Upon application to the county committee, within five years from the date of such acquisition of the farm, any owner so displaced shall be entitled to have an allotment for any other farm owned or purchased by him equal to an allotment which would have been determined for such other farm plus the allotment which would have been determined for the farm so acquired: *Provided*, That such allotment shall not exceed 20 percent of the acreage of cropland on the farm in the case of Burley tobacco and 50 percent of the acreage of cropland on the farm in the case of flue-cured tobacco.

(b) The provisions of this section shall not be applicable if (1) there is any marketing quota penalty due with respect to the marketing of tobacco from the farm or by the owner of the farm at the time of its acquisition by the Federal, State, or other agency; (2) any tobacco produced on such farm has not been accounted for as required by the Secretary; or (3) the allotment next to be established for the farm acquired by the Federal, State, or other agency would have been reduced because of false or improper identification of tobacco produced on or marketed from such farm.

§ 725.321 *Farms divided or combined.* (a) If land operated as a single farm in 1951 will be operated in 1952 as two or more farms, the 1952 tobacco acreage allotment determined or which otherwise would have been determined for the entire farm shall be apportioned among the tracts in the same proportion as the acreage of cropland available for the production of tobacco in each such tract in such year bore to the total number of acres of cropland available for the production of tobacco on the entire farm in such year, except that, upon recommendation of the county committee and with State committee approval and agreement of the interested persons in writing, the tobacco acreage allotment determined or which otherwise would have been determined for the entire farm may, if the farm to be divided for 1952 consists of two or more tracts which were separate and distinct farms before being combined within the past five years (1947–51), be apportioned among the tracts in the same proportion that each contributed to the farm acreage allotment: *Provided*, That with the recommendation of the county committee and approval of the State committee, the tobacco acreage allotment determined for a tract under the provisions of this paragraph may be increased or decreased by not more than the larger of one-tenth acre or 10 percent of the 1952 acreage allotment determined for the entire farm with corresponding increases or decreases made in the acreage allotment apportioned to the other tract or tracts.

(b) If two or more farms operated separately in 1951 are combined and operated in 1952 as a single farm, the 1952 allotment shall be the sum of the 1952 allotments determined for each of the farms composing the combination or, in the case of Burley tobacco, if smaller, the allotment determined or which would have been determined for the farm as constituted in 1952.

(c) If a farm is to be divided in 1952 in settling an estate, the allotment may be divided among the various tracts in accordance with paragraph (a) of this section or on such other basis as the State committee determines will result in equitable allotments.

§ 725.322 *Determination of normal yields.* The normal yield for any old farm shall be that yield which the county committee determines is normal for the farm taking into consideration (a) the yields obtained on the farm during the five years 1946–50, (b) the soil and other physical factors affecting the production of tobacco on the farm, and (c) the yields obtained on other farms in the locality which are similar with respect to such factors.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

§ 725.323 *Determination of acreage allotments for new farms.* (a) The acreage allotment, other than an allotment made under § 725.320, for a new farm shall be that acreage which the county committee determines is fair and reasonable for the farm taking into consideration the past tobacco experience of the farm operator; the land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That the acreage allotment so determined shall not exceed in the case of Burley tobacco 50 percent of the allotments for old Burley farms which are similar with respect to land, labor and equipment available for the production of tobacco, crop-rotation practices, and the soil and other physical factors affecting the production of tobacco; and in the case of flue-cured tobacco, the smaller of (1) 15 percent of the cropland in the farm including land from which a cultivated crop was harvested in 1951 or (2) 75 percent of the allotment for old flue-cured tobacco farms which are similar with respect to land, labor, and equipment available for the production of tobacco, crop-rotation practices, and the soil and other physical factors affecting the production of tobacco.

(b) Notwithstanding any other provisions of this section a tobacco acreage allotment shall not be established for any new farm unless each of the following conditions has been met:

(1) The farm operator shall have had experience in growing the kind of tobacco for which an allotment is requested either as a share cropper, tenant, or as a farm operator during two of the past five years: *Provided, however*, That a farm operator who was in the armed services during World War II shall be deemed to have met the requirements hereof if he has had experience in growing the kind of tobacco for which an allotment is requested during one year either within the five years immediately prior to his entry into the armed services or since his discharge from the armed services.

(2) The farm operator shall live on and be largely dependent for his livelihood on the farm covered by the application.

(3) The farm covered by the application shall be the only farm owned or operated by the owner or farm operator for which a Burley or flue-cured tobacco allotment is established for the 1952–53 marketing year.

(c) The acreage allotments established as provided in this section shall be subject to such downward adjustment as is necessary to bring such allotments in line with the total acreage available for allotment to all new farms. One-half of one percent of the 1952 national marketing quota shall, when converted to an acreage allotment by the use of the national average yield, be available for establishing allotments for new farms. The national average yield shall be the average of the several State yields used in converting the State marketing quotas into State acreage allotments.

§ 725.324 *Time for filing application.* An application for a new farm allotment shall be filed with the county committee prior to February 1, 1952, unless the farm operator was discharged from the armed services subsequent to December 31, 1951, in which case such application shall be filed within a reasonable period prior to planting tobacco on the farm.

§ 725.325 *Determination of normal yields.* The normal yield for a new farm shall be that yield per acre which the county committee determines is normal for the farm as compared with yields for other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar.

MISCELLANEOUS

§ 725.326 *Determination of acreage allotments and normal yields for farms returned to agricultural production.* (a) Notwithstanding the foregoing provisions of §§ 725.311 to 725.325, the acreage allotment for any farm which was acquired by any Federal, State, or other agency having the right of eminent domain, for any purpose and which is returned to agricultural production in 1952 or which was returned to agricultural production in 1951 too late for the 1951 allotment to be established, shall be determined by one of the following methods:

(1) If the land is acquired by the original owner, any part of the acreage allotment which was or could have been established for such farm prior to its retirement from agricultural production which remains in the State pool (adjusted to reflect the uniform increases and decreases in comparable old farm

allotments since the farm was acquired) may be established as the 1952 allotment for such farm by transfer from the pool, and if any part of the allotment for such land was transferred by the original owner through the State pool to another farm now owned by him, such owner may elect to transfer all or any part of such allotment (as adjusted) to the farm which is returned to agricultural production.

(2) If the land is acquired by a person other than the original owner, or if all of the allotment was transferred through the State pools to another farm and the original owner does not now own the farm to which the allotment was transferred, the farm returned to agricultural production shall be regarded as a new farm.

(b) The normal yield for any such farm shall be that yield per acre which the county committee determines is reasonable for the farm as compared with yields for other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar.

§ 725.327 *Approval of determinations made under §§ 725.311 to 725.326.* The State committee will review all allotments and yields and may correct or require correction of any determinations made under §§ 725.311 to 725.326. All acreage allotments and yields shall be approved by the State committee and no official notice of acreage allotment shall be mailed to a grower until such allotment has been approved by the State committee.

§ 725.328 *Application for review.* Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for his farm, may, within fifteen days after mailing of the official notice of the farm acreage allotment and marketing quota, file application with the county committee to have such allotment reviewed by a review committee. The procedures governing the review of farm acreage allotments and marketing quotas are contained in the regulations issued by the Secretary (7 CFR, Part 711) which are available at the office of the county committee.

Done at Washington, D. C., this 11th day of September 1951. Witness my hand and seal of the Department of Agriculture.

[SEAL] CHARLES F. BRANNAN,
*Secretary of Agriculture.*

[F. R. Doc. 51-11123; Filed, Sept. 14, 1951; 8:49 a. m.]

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## Chapter VIII—Production and Marketing Administration (Sugar Branch), Department of Agriculture

### Subchapter H—Determination of Wage Rates

[Sugar Determination 865.4]

### PART 865—SUGARCANE (HARVESTING); LOUISIANA

### WAGES (HARVESTING) 1951 CROP

Pursuant to the provisions of section 301 (c) (1) of the Sugar Act of 1948 (herein referred to as "act"), after investigation, and consideration of the evidence obtained at the public hearing held in Thibodaux, Louisiana, on July 11, 1951, the following determination is hereby issued:

§ 865.4 *Fair and reasonable wage rates for persons employed in the harvesting of the 1951 crop of sugarcane in Louisiana*—(a) *Requirements.* The requirements of section 301 (c) (1) of the act shall be deemed to have been met with respect to the harvesting of the 1951 crop of sugarcane in Louisiana if the producer complies with the following:

(1) *Wage rates.* All persons employed on the farm shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the laborer, but after the beginning of work on the 1951 crop, or the date of issuance of this determination, whichever is later, not less than the following:

(i) *Basic wage rates and adjustment for sugar price changes.* When the average price of raw sugar is within the base price range of $5.60 to $6.00, inclusive, per one hundred pounds for the two-week period immediately preceding the two-week period during which the work is performed, and for each full 10 cents that such price shall average more than $6.00 or less than $5.60, the basic day and piecework wage rates in the following table shall be applicable:

TABLE OF RAW SUGAR PRICE RANGES AND APPLICABLE BASIC WAGE RATES[1]

| Operations | Price ranges—2-week average price of 100 pounds of raw sugar | | | | | | |
|---|---|---|---|---|---|---|---|
| At least | $5.201 | $5.301 | $5.401 | $5.501 | $6.100 | $6.200 | $6.300 |
| But not more than | 5.300 | 5.400 | 5.500 | 6.099 | 6.199 | 6.299 | 6.399 |
| | | | | *Base price range $5.60–$6.00* | | | |
| Basic day wage rates per 9-hour day: | | | | | | | |
| Cutting, topping, stripping: | | | | | | | |
| Adult males | $3.505 | $3.570 | $3.635 | $3.700 | $3.800 | $3.900 | $4.000 |
| Adult females | 3.055 | 3.120 | 3.185 | 3.250 | 3.350 | 3.450 | 3.550 |
| Loading | 4.155 | 4.220 | 4.285 | 4.350 | 4.450 | 4.550 | 4.650 |
| Cutting and loading | 3.705 | 3.770 | 3.835 | 3.900 | 4.000 | 4.100 | 4.200 |
| Tractor drivers and truck drivers | 4.255 | 4.320 | 4.385 | 4.450 | 4.550 | 4.650 | 4.750 |
| Teamsters | 4.055 | 4.120 | 4.185 | 4.250 | 4.350 | 4.450 | 4.550 |
| Hoist operators | 3.705 | 3.770 | 3.835 | 3.900 | 4.000 | 4.100 | 4.200 |
| Operators of mechanical loading or harvesting equipment | 4.605 | 4.670 | 4.735 | 4.800 | 4.900 | 5.000 | 5.100 |
| Pilers | 3.705 | 3.770 | 3.835 | 3.900 | 4.000 | 4.100 | 4.200 |
| Grabmen, spotters, ropemen | 4.155 | 4.220 | 4.285 | 4.350 | 4.450 | 4.550 | 4.650 |
| Scrappers | 3.505 | 3.570 | 3.635 | 3.700 | 3.800 | 3.900 | 4.000 |
| Any other operations connected with harvesting | 3.055 | 3.120 | 3.185 | 3.250 | 3.350 | 3.450 | 3.550 |
| Basic piecework rates per ton—large barrel varieties:[2] | | | | | | | |
| Cutting top and bottom, and stripping | 1.275 | 1.300 | 1.325 | 1.350 | 1.3875 | 1.4250 | 1.4625 |
| Cutting top and bottom | .805 | .820 | .835 | .850 | .8725 | .8950 | .9175 |
| Loading | .425 | .430 | .435 | .440 | .4475 | .4550 | .4625 |
| Cutting top and bottom, stripping, and loading | 1.700 | 1.730 | 1.760 | 1.790 | 1.8350 | 1.8800 | 1.9250 |
| Cutting top and bottom and loading | 1.230 | 1.250 | 1.270 | 1.290 | 1.3200 | 1.3500 | 1.3800 |
| Small barrel varieties:[2] | | | | | | | |
| Cutting top and bottom, and stripping | 1.560 | 1.590 | 1.620 | 1.650 | 1.6950 | 1.7400 | 1.7850 |
| Cutting top and bottom | .990 | 1.010 | 1.030 | 1.050 | 1.0800 | 1.1100 | 1.1400 |
| Loading | .500 | .510 | .520 | .530 | .5450 | .5600 | .5750 |
| Cutting top and bottom, stripping and loading | 2.060 | 2.100 | 2.140 | 2.180 | 2.2400 | 2.3000 | 2.3600 |
| Cutting top and bottom and loading | 1.490 | 1.520 | 1.550 | 1.580 | 1.6250 | 1.6700 | 1.7150 |

[1] For each successive full 10-cent price change above $6.30 or below $5.30, the basic wage rates shall be increased or decreased, correspondingly, by the same amounts as shown above for each full 10-cent price change.

[2] Large barrel varieties: Co. 290; C. P. 29/103; C. P. 29/116; C. P. 32/243; C. P. 36/13; C. P. 36/105; and C. P. 29/120. Small barrel varieties: All other.

(ii) *Workers between 14 and 16 years of age when employed on a day basis.* For workers between 14 and 16 years of age, the basic wage rate per 8-hour day (maximum employment per day for such workers without deduction from Sugar Act payments to the producer) shall be not less than three-fourths of the applicable basic day wage rate provided under subdivision (i) of this subparagraph.

(iii) *Hourly rates.* Where workers are employed on an hourly basis, the basic wage rate per hour shall be determined by dividing the applicable basic day wage rate in subdivision (i) of this subparagraph by 9 in the case of adult workers, and three-fourths of such rate by 8 in the case of workers between 14 and 16 years of age.

(iv) *Other piecework rates.* The piecework rate for any operation specified in subdivision (i) of this subparagraph when performed on a unit basis other than a ton, or the piecework rate for any operation not specified shall be that agreed upon between the producer and the worker: *Provided,* That the hourly rate of earnings of each worker, for the time involved, shall be not less than the applicable hourly rate specified in subdivision (iii) of this subparagraph.

(v) *Determination of average sugar prices.* The two-week average price of raw sugar shall be determined by taking the simple average of the daily "spot" quotations of 96° raw sugar of the Louisiana Sugar Exchange, Inc., adjusted to a one hundred pound basis; except that if the Director of the Sugar Branch determines that for any two-week period such average price does not reflect the true market value of raw sugar, because of inadequate volume, failure to report sales in accordance with the rules of such Exchange or other factors, the Director may designate the average price to be effective under this determination. For the purpose of this determination the average price of raw sugar prevailing during the period from September 7 through September 20, 1951, shall determine the wage rates from September 21 through October 4, 1951, and thereafter the wage rates in successive two-week work periods shall be determined by the average price of raw sugar prevailing in the immediately preceding two-week period.

(2) *Perquisites.* In addition to the foregoing, the producer shall furnish to the laborer, without charge, the perquisites customarily furnished by him, such as a habitable house, medical attention, and similar items.

(b) *Subterfuge.* The producer shall not reduce the wage rates to laborers below those determined herein through any subterfuge or device whatsoever.

(c) *Claim for unpaid wages.* Any person who believes he has not been paid in accordance with this determination may file a wage claim with the local County Production and Marketing Administration Committee against the producer on whose farm the work was performed. Such claim must be filed within two years from the date the work with respect to which the claim is made was performed. Detailed instructions and wage claim forms are available at the office of the local County Production and Marketing Administration Committee. Upon receipt of a wage claim the County Production and Marketing Administration Committee shall thereupon notify the producer against whom the claim is made concerning the representation made by the laborer, and, after making such investigation as it deems necessary, notify the producer and laborer in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the State Production and Marketing Administration Committee, University Station, Baton Rouge, Louisiana, which shall likewise consider the facts and notify the producer and laborer in writing of its recommendation for settlement of the claim. If the recommendation of the State Production and Marketing Administration Committee is not acceptable, either party may file an appeal with the Director of the Sugar Branch, Production and Marketing Administration, U. S. Department of Agriculture, Washington 25, D. C. All such appeals shall be filed within fifteen days after receipt of the recommended settlement from the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Director of the Sugar Branch, his decision shall be binding on all parties insofar as payments under the act are concerned.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination provides fair and reasonable wage rates which a producer must pay, as a minimum, for work performed by persons employed on the farm in the harvesting of the 1951 crop of sugarcane in Louisiana, as one of the conditions for payment under the act. In this statement, the foregoing determination, as well as determinations for prior years, will be referred to as "wage determination" identified by the period for which effective.

(b) *Requirements of the act and standards employed.* In determining fair and reasonable wage rates it is required under the act that a public hearing be held, that investigations be made, and that consideration be given to (1) the standards formerly established by the Secretary under the Agricultural Adjustment Act, as amended, and (2) the differences in conditions among various sugar producing areas.

A public hearing was held in Thibodaux, Louisiana, on July 11, 1951, at which interested persons presented testimony with respect to fair and reasonable wage rates for harvesting the 1951 crop of sugarcane. In addition, investigations have been made of the conditions affecting wage rates in Louisiana. In this determination, consideration has been given to testimony presented at the hearing and to the information resulting from investigations. The primary factors which have been considered are (1) prices of sugar and byproducts; (2) income from sugarcane; (3) cost of production; (4) cost of living; and (5) relationship of labor cost to total cost. Other economic influences also have been considered.

(c) *Background.* Wage determinations applicable to harvesting sugarcane in Louisiana have been issued each year beginning with the 1937 crop. The earlier determinations provided time rates for adult males and females as well as alternative piecework rates. Subsequently, coverage was extended to include semi-skilled and skilled workers and workers between 14 and 16 years of age. Adjustments have been made in time and piecework rates as necessary to conform with changes in production and harvesting methods.

The 1937 wage determination increased basic adult male wages for harvest 25 cents per 9-hour day over those of the previous year. The basic wage rates established were not changed until 1941 when such rates were increased 15 cents per day.

In each subsequent year, except 1944, until 1948, the basic wage rates were increased in varying amounts. Throughout the years wage rates have been established primarily on the basis of the historical wage-income relationship, although in some years the relationship has been altered somewhat to give recognition to significant changes which have occurred in other factors customarily considered in establishing wage rates.

In order that wage rates might be more responsive to significant changes in sugar prices and producer income than was possible under the fixed wage levels of preceding determinations, there was included in the 1948 determination a modified wage-price escalator scale. Provision was made that basic time and piecework rates for a two-week work period be increased or decreased for each full 10 cents that the average price of 96° raw sugar was more than $6.25 or less than $5.60 per one hundred pounds for the two-week period immediately preceding the two-week period during which the work was performed. The amount of increase or decrease was $0.065 per 9-hour day in the case of time rates and in amounts ranging from $0.005 to $0.040 per ton in the case of piecework rates. In the 1949 determination the upper limit of the base price range was lowered from $6.25 to $6.00.

In the 1950 wage determination basic wage rates were increased 20 cents per day within the base price range for all classes of workers. During the harvest the average price of sugar resulted in a further increase under the wage-price escalator of about 11 cents per day for all workers. As a consequence wage rates during the 1950 crop were about 31 cents per day higher than during the 1949 crop.

The average basic wage rate for all classes of workers has been increased from 17.0 cents per hour in the base period 1938–40 to 44.0 cents per hour inclusive of escalator increments in 1950, an increase of 158.8 percent. Increases also have been made in piecework rates. It is reported that earnings of piecework employees employed in harvesting operations average about 70 cents per hour.

(d) *1951 wage determination.* In the 1951 wage determination wage payments to workers under the wage-price escalator are increased from 6.5 cents to 10 cents per 9-hour day for each full 10 cent increase in the price of raw sugar above $6.00 per cwt. Likewise piecework rate increments are increased proportionately. Other provisions of the 1951 wage determination continue unchanged from those of the 1950 wage determination.

At the public hearing, respresentatives of producers recommended that the wage increments to workers under the wage-price escalator be increased to 10 cents per 9-hour day from 6.5 cents which was effective during the 1950 crop, when the price of raw sugar reached $6.40 per cwt. It was further recommended that a wage differential be provided for female sugarcane scrappers as compared with male sugarcane scrappers. A spokesman for labor, while making no specific recommendation with respect to wage rates, appealed to all interested parties to do everything within their power to raise the income level of sugarcane field workers.

The wage increases provided in the 1951 wage determination will permit greater participation by workers in higher sugar prices received by producers. While the position of producers at price levels under $6.00 per cwt. of raw sugar does not permit an increase in wage rates, an analysis of costs, returns and profits data indicates that producers are able to pay somewhat higher wage rates when the price of sugar exceeds $6.00. Analysis of other factors generally considered in wage determinations shows that costs of producing sugarcane and the cost of living of sugarcane workers have risen during the past year. However, at levels of producer income expected to result from sugar and molasses prices for the 1951 crop, the wage rates provided in this determination are deemed to be fair and reasonable.

The recommendation for a wage differential for female sugarcane scrappers has not been adopted because of the lack of data upon which to base an appropriate differential for these workers.

As in previous wage determinations, in addition to cash wages, the workers must be furnished, without charge, customary

perquisites such as habitable housing, medical attention and similar items.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948.

(Sec. 403, 61 Stat. 932; 7 U. S. C. Sup. 1153. Interprets or applies sec. 301, 61 Stat. 929; 7 U. S. C. Sup. 1131)

Issued this 12th day of September, 1951.

[SEAL] CHARLES F. BRANNAN,
*Secretary of Agriculture.*

[F. R. Doc. 51-11195; Filed, Sept. 14, 1951; 8:52 a. m.]

## Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

[Orange Reg. 200]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.531 *Orange Regulation 200*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR, Part 933), regulating the handling of oranges, grapefruit and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than September 15, 1951. Shipments of oranges, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, and will so continue until September 15, 1951; the recommendation and supporting information for regulation in the manner herein prescribed, beginning on September 15, 1951, was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on September 11; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the uninterrupted regulation of the handling of oranges during the current marketing season; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., September 15, 1951, and ending at 12:01 a. m., e. s. t., October 1, 1951, no handler shall ship:

(i) Any oranges, except Temple oranges, grown in Regulation Area I or Regulation Area II which grade U. S. No. 2 Bright, U. S. No. 2, U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade;

(ii) Any oranges, except Temple oranges, grown in Regulation Area I or Regulation Area II which are of a size smaller than $2\frac{8}{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the revised United States Standards for Oranges (7 CFR 51.192): *Provided,* That in determining the percentage of oranges in any lot which are smaller than $2\frac{8}{16}$ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size $2\frac{14}{16}$ inches in diameter and smaller;

(2) As used in this section, the terms "handler," "ship," "Regulation Area I," "Regulation Area II," and "Growers Administrative Committee" shall each have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 2 Bright," "U. S. No. 2," "U. S. No. 2 Russet," and "U. S. No. 3," shall each have the same meaning as when used in the revised United States Standards for Oranges (7 CFR 51.192).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 13th day of September 1951.

[SEAL] FLOYD F. HEDLUND,
*Acting Director, Fruit and Vegetable Branch, Production and Marketing Administration.*

[F. R. Doc. 51-11211; Filed, Sept. 14, 1951; 8:53 a. m.]

[Grapefruit Reg. 145]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.532 *Grapefruit Regulation 145*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR, Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than September 15, 1951. Shipments of grapefruit grown in the State of Florida have been subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, since September 3, 1951, and will so continue until September 15, 1951; the recommendation and supporting information for continued regulation subsequent to September 14 was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on September 11; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time thereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., September 17, 1951, and ending at 12:01 a. m.,

e. s. t., October 1, 1951, no handler shall ship:

(i) Any grapefruit of any variety, grown in the State of Florida, which do not grade at least U. S. No. 2;

(ii) Any seeded grapefruit, other than pink grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 70 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(iii) Any seedless grapefruit, other than pink grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(iv) Any pink seeded grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box; or

(v) Any pink seedless grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 96 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box.

(2) As used in this section, "handler," "variety," and "ship," shall have the same meaning as when used in said amended marketing agreement and order; and "U. S. No. 2," "standard pack," and "standard nailed box" shall have the same meaning as when used in the revised United States Standards for Grapefruit (7 CFR 51.191).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 13th day of September 1951.

[SEAL] FLOYD F. HEDLUND,
*Acting Director, Fruit and Vegetable Branch, Production and Marketing Administration.*

[F. R. Doc. 51-11212; Filed, Sept. 14, 1951; 8:53 a. m.]

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## PART 941—MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA

### ORDER SUSPENDING CERTAIN PROVISIONS

Pursuant to the applicable provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 1940 ed. 601 et seq.), hereinafter referred to as the "act," and of the order, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area, hereinafter referred to as the "order," it is hereby found and determined that §§ 941.52 (a) (3) and 941.52 (b) (3) of such order will not tend to effectuate the declared policy of the act with respect to all milk subject to the provisions thereof for the remainder of September 1951.

It is hereby further found and determined that compliance with the notice, public rule making procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong.; 60 Stat. 237) in connection with the issuance hereof is impracticable, unnecessary and contrary to the public interest, in that (1) the information upon which this action is based did not become available in sufficient time for such compliance; (2) the issuance of this suspension order effective as set forth below is necessary to the effectuation of the declared policy of the act; and (3) this action will relieve certain restrictions imposed by the order. Section 941.52 (a) (3) and § 941.52 (b) (3) have application in the months of September, October and November. In view of abnormally favorable milk production conditions which have prevailed in the milkshed since the adoption of such provisions and exist at this time, it is now apparent that the operation of §§ 941.52 (a) (3) and 941.52 (b) (3) will not be conducive to the orderly marketing of available supplies. Temporary suspension of such provisions is urged by a large majority of the producer and handler interests in the Chicago market pending early fall developments concerning milk supplies and disposition. The changes caused by this suspension order do not require of persons affected substantial or extensive preparation prior to it effective date.

*It is therefore ordered,* That the following provisions of the order be and they are hereby suspended for the period from the date of publication of this suspension order in the FEDERAL REGISTER through September 30, 1951, inclusive:

1. Section 941.52 (a) (3) in its entirety; and

2. Section 941.52 (b) (3) in its entirety.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 11th day of September 1951.

[SEAL] CHARLES F. BRANNAN,
*Secretary of Agriculture.*

[F. R. Doc. 51-11125; Filed, Sept. 14, 1951; 8:49 a. m.]

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## PART 951—TOKAY GRAPES GROWN IN CALIFORNIA

### RECODIFICATION

In accordance with the revised Federal Register Regulations (1 CFR Part 1), the format of the order, as amended (Order No. 51, 5 F. R. 2383; 6 F. R. 4291; 14 F. R. 440; 7 CFR Part 951) of the Secretary of Agriculture, regulating the handling of Tokay grapes grown in California (including the requisite findings set forth therein), and the format of the Industry Committee's Regulations (11 F. R. 11267; 14 F. R. 5963; 16 F. R. 7874; 7 CFR Part 951) adopted pursuant thereto with the approval of the Secretary of Agriculture, are recodified as hereinafter set forth. To facilitate cross reference between the aforesaid order and the marketing agreement and to obviate possible difficulties in future amendatory proceedings, the regulatory sections of Marketing Agreement No. 93 shall be renumbered and the section headings redesignated to conform to the recodified order. The supplementary provisions of the said marketing agreement shall be renumbered as follows: §§ 951.95 *Counterparts;* 951.96 *Additional parties;* and 951.97 *Order with marketing agreement.*

This recasting of the format and recodification is not intended, nor shall it be deemed, to make any substantive change in the provisions of the aforesaid order of the Secretary, the aforesaid marketing agreement, and the aforesaid regulations of the Industry Committee.

Done at Washington, D. C., this 12th day of September 1951.

[SEAL] CHARLES F. BRANNAN,
*Secretary of Agriculture.*

SUBPART—ORDER RELATIVE TO HANDLING

FINDINGS AND DETERMINATIONS

Sec.
951.0 Findings and determinations.

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951.58 Inspection.

REGULATION OF DAILY SHIPMENTS

951.60 Definitions.
951.61 Recommendation of regulation.
951.62 Establishment of regulation.
951.63 Retention of cars in assembly points.
951.64 Reports by handlers.

AUTHORITY: §§ 951.1 to 951.170, issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c.

SOURCE: §§ 951.1 to 951.94 contained in Order No. 51, 5 F. R. 2883, 6 F. R. 4291; 14 F. R. 440.

SOURCE: §§ 951.100 to 951.170, inclusive, appear at 11 F. R. 11167; 14 F. R. 5964; 16 F. R. 7574.

## SUBPART—ORDER RELATIVE TO HANDLING

### FINDINGS AND DETERMINATIONS

§ 951.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary to and in addition to the findings and determinations made in connection with the issuance of this order and of the previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein. (For findings and determinations previously made see 5 F. R. 2883 and 6 F. R. 4291).

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the rules of practice and procedure effective thereunder (7 CFR and Supps. 900.1 et seq.), a public hearing was held at Lodi, California, beginning on April 15, 1948, upon proposed amendments to Marketing Agreement No. 93, as amended, and Order No. 51, as amended (7 CFR, Cum. Supp., 951.1 et seq.), regulating the handling of Tokay grapes grown in the State of California. Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of Tokay grapes grown in the State of California in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement and the proposed amendments thereto upon which hearings have been held; and

(3) There are no differences in the production and marketing of said grapes grown in the production area covered by the said order, as amended and as hereby further amended, that make necessary different terms and provisions applicable to different parts of said area.

(b) *Determinations.* It is hereby determined that:

(1) The agreement amending the marketing agreement, as amended, regulating the handling of Tokay grapes grown in the State of California, upon which the aforesaid public hearing was held, has been executed by handlers (excluding cooperative associations of producers who were not engaged in processing, distributing, or shipping the fruit covered by this order) who, during the marketing season April 1, 1947, to March 31, 1948, both inclusive, handled not less than 50 percent of the volume of Tokay grapes covered by said order, as amended and hereby further amended;

(2) The aforesaid agreement amending the marketing agreement, as amended, has been executed by handlers who were signatory parties to said marketing agreement, as amended, and who, during the aforesaid marketing season, handled not less than 50 percent of the volume of Tokay grapes, grown in the State of California, handled by all handlers signatory to said marketing agreement, as amended, during said marketing season;

(3) The issuance of this order, amending the aforesaid order as amended, is favored and approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the determined representative period (April 1, 1947, to March 31, 1948, both inclusive), were engaged, within the State of California, in the production for market of Tokay grapes; and

(4) The issuance of this order, amending the aforesaid order as amended, is favored and approved by producers who participated in the aforesaid referendum on the question of its approval and who, during the aforesaid determined representative period, produced for market, within the State of California, at least two-thirds of the volume of Tokay grapes, produced during said period by all producers who participated in said referendum.

*It is, therefore, ordered,* That, on and after 12:01 a. m., P. s. t., March 1, 1949, the handling of Tokay grapes grown in the State of California shall be in conformity to, and in compliance with, the terms and conditions of the aforesaid order, as amended. Such order, as amended, reads as follows:

### DEFINITIONS

§ 951.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States.

§ 951.2 *Act.* "Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended, and further amended by Public Law 305, 80th Cong., approved August 1, 1947.

§ 951.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 951.4 *Grapes.* "Grapes" means and includes all strains of Tokay grapes grown in the State of California.

§ 951.5 *Grower.* "Grower" is synonymous with "producer" and means any person engaged in the production of grapes who, as the owner of the vineyard or as a tenant thereon, has a financial interest in the crop from such vineyard. As used in § 951.52, "grower" shall also include the purchaser of a crop of grapes on the grapevines.

§ 951.6 *Handler.* "Handler" is synonymous with "shipper" and means any person (except a common carrier of, or an operator of a cold storage for, grapes owned by another person), who, as owner, agent, or otherwise, ships or handles grapes, or causes grapes to be shipped or handled, in fresh form, by rail, truck, boat, or any other means whatsoever.

§ 951.7 *Handle.* "Handle" is synonymous with "ship" and means to sell,

load in a conveyance for transportation, offer for transportation, transport, deliver to a refrigerated storage warehouse in the State of California, or, in any other way to place grapes in the current of commerce between the State of California and any point outside thereof, or so as directly to burden, obstruct, or affect such commerce.

§ 951.8 *Size.* "Size," as used with reference to the size of grapes, means the weight of a bunch of grapes.

§ 951.9 *Standard package.* "Standard package" means the package designated by the Industry Committee and approved by the Secretary.

§ 951.10 *Season.* "Season" means the 12-month period beginning April 1 of any year and ending March 31 of the following year, both inclusive.

§ 951.11 *District.* "District" means the applicable one of the following described subdivisions of the State of California:

(a) "Lodi District" means the County of San Joaquin, and shall be divided into the following Election Districts: (1) "Acampo Election District" means the school district of Houston; (2) "Woodbridge Election District" means the school district of Woods, and that portion of the Galt Joint Union School District situated in San Joaquin County; (3) "Lafayette Election District" means the school districts of Lafayette, Henderson, Turner, Ray, Terminous and New Hope; (4) "Victor Election District" means the school districts of Bruella, Victor, Lockeford, Oak View and Clements; (5) "Alpine Election District" means the school districts of Alpine and Lodi; (6) "Live Oak Election District" means all of the school districts in the Lodi District, other than those included in the Acampo, Woodbridge, Lafayette, Victor, and Alpine Election Districts.

(b) "Florin District", which shall include all of the counties in the State of California except San Joaquin.

COMMITTEES

§ 951.20 *Establishment of Industry Committee.* An Industry Committee consisting of seven members, one for each of the election districts in Lodi District and one for the Florin District, is hereby established. There shall be an alternate for each member of the committee.

§ 951.21 *Selection of initial members of Industry Committee.* The initial members of the Industry Committee and their respective alternates shall be selected by the Secretary as soon as possible after the effective date of this subpart. In selecting such members and their alternates, the Secretary shall make his selection upon the basis of the representation provided for in § 951.20.

§ 951.22 *Nomination of successors to initial members of Industry Committee.* (a) Nominations for members and alternate members of the Industry Committee, subsequent to the initial members and alternates, shall be made at a meeting of growers in the Florin District and in each of the election districts in the Lodi District. Such meetings shall be called by the Industry Committee at such times (on or before March 1 of each season) and at such places within such districts as the said committee shall designate. The growers at each of such meetings shall select a chairman and secretary therefor. After nominations have been made, the chairman or the secretary of such meeting shall forthwith transmit to the Secretary his certificate showing the name of each person for whom votes have been cast, whether as member or as alternate for a member and the number of votes received by each such person.

(b) In the nomination of members and alternate members of the Industry Committee, each grower shall be entitled to cast only one vote, which shall be cast on behalf of himself, his agents, partners, and representatives, for each nominee to be elected in the district in which the grower produces grapes: *Provided*, That in the case of growers who produce grapes in the Lodi District, such growers shall vote only in the election district within the Lodi District in which such growers produce grapes. Only growers who are personally present at such nomination meetings shall be entitled to vote for nominees. Each grower shall be entitled to vote only in one election district or in the Florin District, and only for the nominees to be elected in such election district or in the Florin District, as the case may be.

§ 951.23 *Eligibility for membership on Industry Committee.* A person nominated or selected to serve as a member or as an alternate member of the Industry Committee, for any particular season, shall be an individual grower who produced, during the season immediately prior to the season for which the grower has been so nominated or selected, at least 51 percent of the grapes shipped by him during such prior season; or such person shall be an officer, employee, or agent of an organization which produced, during such prior season, at least 51 percent of the grapes shipped by such organization during such prior season; and any such person shall be an individual grower who, or an officer, employee, or agent of an organization which, produced grapes during such prior season in that particular election district in the Lodi District, or in the Florin District, as the case may be, for which he was nominated or selected as a member or as an alternate member of such committee.

§ 951.24 *Selection of successors to initial members of Industry Committee.* The Secretary shall select the successors to the initial members and alternate members of the Industry Committee, for each district, from the nominees elected by, or from among, the growers in such district; and such selection shall be upon the basis of the representation provided for in § 951.20.

§ 951.25 *Failure to nominate.* In the event nominations for members and alternate members of the Industry Committee are not made, pursuant to § 951.22, on or before April 15 of the season for which such nominations should have been made, the Secretary may select the members and alternate members for such season without regard to nominations.

§ 951.26 *Qualification.* Each person selected as a member or an alternate member of the Industry Committee shall qualify by filing with the Secretary a written acceptance thereof before performing any of his duties under this subpart.

§ 951.27 *Terms of office.* The initial members and alternate members of the Industry Committee shall hold office for a term beginning on the date of their selection by the Secretary and ending March 31, 1941, or until their successors are selected and have qualified. Members and alternate members selected subsequent to the initial members and alternate members shall serve during the season for which they have been selected and until their successors are selected and have qualified.

§ 951.28 *Alternate members.* An alternate for a member shall, in the event of such member's absence from a meeting of the Industry Committee, act in the place and stead of such member, and, in the event of such member's removal, resignation, disqualification, or death, shall act in the place and stead of such member until a successor for the unexpired term of such member has been selected.

§ 951.29 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a member or an alternate member of the Industry Committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member, a successor for the unexpired term of such person shall be nominated and selected in accordance with the provisions of this subpart, covering the nomination and selection of members and alternate members. If a successor for any such vacancy is not nominated within 20 days after such a vacancy occurs, the Secretary may select such successor, who shall have the same qualifications as his predecessor, without regard to nominations.

§ 951.30 *Compensation.* The members of the Industry Committee, and the alternate members of such committee when acting for members, may be reimbursed for expenses necessarily incurred by them in attending each meeting of the said committee and in performing services, necessary in connection with this subpart, at the request of such committee; and they may receive compensation in an amount not in excess of $5.00 per day for attending each such meeting and for performing such services. The members of the Shippers' Advisory Committee, and the alternate members of such committee when acting for members, may be reimbursed for expenses necessarily incurred by them in attending each meeting of the said committee.

§ 951.31 *Powers.* The Industry Committee shall have the following powers:

(a) To administer, as specifically provided in this subpart, the terms and provisions of this subpart;

(b) To make administrative rules and regulations in accordance with this subpart, and to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 951.32 *Duties.* The duties of the Industry Committee shall be as follows:

(a) To act as intermediary between the Secretary and any grower or handler;

(b) To keep minutes, books, and records which will clearly reflect all of the acts and transactions of the Industry Committee, which minutes, books, and records shall be subject at all times to examination by the Secretary;

(c) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to grapes, and to engage in such research and service activities relating to the handling of grapes as may be approved, from time to time, by the Secretary;

(d) To furnish to the Secretary such available information as the Secretary requests;

(e) To perform such duties as may be assigned to it from time to time, by the Secretary in connection with the administration of section 32 of the act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774; 7 U. S. C. 612c), as amended;

(f) To cause the books of the Industry Committee to be audited by one or more competent accountants at least once each season and at such other times as the Industry Committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports;

(g) To select a chairman of the Industry Committee and such other officers as it may deem advisable;

(h) To defend all legal proceedings against any Industry Committee members (individually or as members), or any officers or employees of such committee, arising out of any act or omission made in good faith pursuant to the provisions of this subpart;

(i) To employ a confidential employee or employees who shall perform the services required of the confidential employee or employees by the provisions of this subpart; to employ such other employees as may be necessary, including a manager who shall, among other duties, act as the secretary of the Industry Committee, and such manager may be designated as confidential employee; to determine the salary and duties of such manager and other employees; to authorize, if the committee deems such to be necessary, the manager for and on behalf of the committee to employ temporarily, subject to such limitations and qualifications as may be specified by the committee, such other persons as may be deemed necessary and to determine the respective salaries (which shall be reasonable and within the limitations of the budget and such other limitations as may be prescribed by the committee) and define the respective duties of such employees;

(j) To give the Secretary the same notice of meetings of the Industry Committee as is given to the members thereof;

(k) To submit to the Secretary for each season a budget of its expenses during such season;

(l) With the approval of the Secretary, to redefine the districts and election districts into which the State of California has been divided in this subpart, or change the representation from any district or election district on the Industry Committee: *Provided*, That if any such changes are made, representation on such committee from the various districts shall be based, so far as practical, upon the proportionate quantity of grapes shipped from the respective districts during the two seasons immediately preceding the season during which such changes are made;

(m) To authorize, whenever the committee deems it advisable, an employee or employees of the committee to perform any ministerial duties of the committee, subject to the exceptions and limitations set forth in this subpart: *Provided*, That such authorization by the committee shall specify the employee or employees and state definitely the limitations of the authority thus vested in the respective employee or employees: *Provided, further*, That the committee shall retain concurrent authority in connection with any such duties and shall not authorize any employee or employees to perform (1) the duties of the committee relating to the recommendations to the Secretary for the regulation of shipments pursuant to the provisions of this subpart; or (2) the duties or authority of the committee relating to the establishment of rules and regulations pursuant to the provisions and subject to the limitations set forth in this subpart;

(n) To establish such other committees or subcommittees to aid the Industry Committee in the performance of its duties under this subpart as the Industry Committee may deem it advisable; and

(o) Each season, prior to making any recommendation to the Secretary for a regulation of shipments pursuant to the provisions of this subpart, to determine the marketing policy to be followed during the ensuing season and to submit a report of such policy to the Secretary; said policy report to contain, among other provisions, information relative to the estimated total production and shipments of grapes, by districts; the expected general quality and size of grapes; possible or expected demand conditions of different market outlets; supplies of competitive commodities; an appropriate analysis of the foregoing factors and conditions; and the type of regulation of shipments of grapes excepted to be recommended.

§ 951.33 *Procedure.* (a) A quorum of the Industry Committee shall consist of five members or alternates then serving in the place and stead of any members in attendance at the meeting, and all decisions of the Industry Committee shall require the affirmative vote of not less than five members.

(b) The members of the Industry Committee, including successors and alternates, and any agent or employee appointed or employed by the Industry Committee, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the Industry Committee shall be subject to the continuing right of the Secretary to disapprove of the same any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 951.34 *Funds and property.* (a) All funds received by the Industry Committee pursuant to the provisions of this subpart shall be used solely for the purposes herein specified; and the Secretary may require the Industry Committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, or expiration of the term of office of any member of the Industry Committee, all books, records, funds, and other property in his possession or under his control as such member, which relate to the business of the said committee, shall be delivered to his successor in office or to the committee, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the committee full title to such books, records, funds, and property.

§ 951.40 *Shippers Advisory Committee.* (a) A Shippers' Advisory Committee, consisting of seven members selected by the handlers in accordance with the provisions of this subpart, is hereby established. There shall be an alternate for each member of such committee. The alternate member shall possess the same qualifications as the member and shall be selected in the same manner as provided in this subpart for the selection of members. An alternate member shall, in the event of such member's absence from a meeting of the committee, act in the place and stead of such member, and, in the event of a vacancy in the office of such member, shall act in the place and stead of such member until a successor for the unexpired term of such member has been selected.

(b) Six members of the Shippers' Advisory Committee shall be elected by handlers at a general meeting of all handlers, at which each handler shall have one vote. Three of such members shall be elected by handlers who, during the preceding season, individually shipped 250,000 or more standard packages or the equivalent thereof of grapes; and three of such members shall be elected by handlers who, during the preceding season, individually shipped less than 250,000 standard packages or the equivalent thereof of grapes. The seventh member of such committee shall be elected jointly by the members of the Industry Committee and the other six

members of the Shippers' Advisory Committee.

(c) Any individual person, except one who is a member or an alternate member of the Industry Committee, shall be eligible for membership on the Shippers' Advisory Committee.

(d) The initial meeting of handlers, at which members of the Shippers' Advisory Committee are to be elected, shall be called and conducted by the Secretary or his agent as soon as possible after the selection of initial members of the Industry Committee. Each handler who desires to vote at the said meeting for the election of members of such committee shall file with the Secretary or his agent an affidavit stating his shipments of grapes during the preceding season. Election meetings held subsequent to the initial meeting shall be called and conducted by the Industry Committee not later than August 1 of each year; and each handler who desires to vote thereat shall file, with the Industry Committee, a statement of his shipments of grapes during the season immediately preceding the season during which such meeting is held.

(e) The Shippers' Advisory Committee may attend each meeting of the Industry Committee held to consider recommendations with respect to regulations of shipments of grapes pursuant to the provisions of this subpart. The Shippers' Advisory Committee may advise the Industry Committee on matters relating to such recommendations, but shall have no vote with the Industry Committee in any matter.

EXPENSES AND ASSESSMENTS

§ 951.45 *Expenses.* The Industry Committee is authorized to incur such expenses as the Secretary may find are reasonable and are likely to be incurred by the Industry Committee during the then current season for its maintenance and functioning and for such research and service activities relating to the handling of grapes as the Secretary may determine to be appropriate. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 951.46.

§ 951.46 *Assessments.* Each handler who first ships grapes shall, with respect to each such shipment, pay to the Industry Committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, by the committee during such season. Such handler's pro rata share of such expenses shall be that proportion thereof which the total quantity of grapes shipped by such handler as the first shipper thereof during such season is of the total quantity of grapes shipped by all handlers as the first shippers thereof during such period. The Secretary shall fix the rate of assessment to be paid by such handlers, which rate may be adjusted from time to time by the Secretary in order to cover any later finding by the Secretary of the estimated expenses or the actual expenses of the Industry Committee during such season. Any such handler who ships grapes for the account of a grower may deduct, from the account sales covering such shipment or shipments, the amount of assessments levied on such grapes.

§ 951.47 *Handler accounts.* (a) At the end of each season the Industry Committee shall credit each handler with any amount paid by such handler in excess of his pro rata share of the expenses or shall debit such handler with the amount by which his pro rata share exceeds the amount paid by him. Any such debits shall become due and payable upon demand of the Industry Committee.

(b) The Industry Committee may, subject to the approval of the Secretary, maintain a suit in its own name or in the names of its members for the collection of any handler's pro rata share of expenses.

REGULATION BY GRADES AND SIZES

§ 951.50 *Recommendation of Industry Committee.* Whenever the Industry Committee deems it advisable to limit the shipment of grapes to particular grades and sizes, it shall so recommend to the Secretary. At the time of submitting any such recommendation, the said committee shall submit to the Secretary the data and information upon which it acted in making such recommendation, including factors affecting the supply of, and the demand for, grapes by grades and sizes thereof, and such other information as the Secretary may request. The said committee shall promptly give adequate notice to the handlers and growers of any such recommendation submitted to the Secretary.

§ 951.51 *Establishment of regulation.* (a) Whenever the Secretary finds, from the recommendation and information submitted by the Industry Committee, or from other available information, that to limit the shipment of grapes, produced in either or both districts, to particular grades and sizes would tend to effectuate the declared policy of the act, he shall so limit the shipment of grapes during a specified period.

(b) The Secretary shall immediately notify the Industry Committee of the issuance of any such regulation, and the said committee shall promptly give adequate notice thereof to handlers and to growers.

§ 951.52 *Exemptions.* (a) The Industry Committee shall, subject to the approval of the Secretary, adopt the procedural rules to govern the issuance of exemption certificates.

(b) In the event the Secretary issues a regulation pursuant to § 951.51, the Industry Committee shall determine for each district the percentage which the grapes produced in each such district, and permitted to be shipped under such regulation, is of the quantity of grapes produced in the respective district which would be shipped in the absence of such regulation. An exemption certificate shall thereafter be issued by the Industry Committee to any grower who furnishes proof, satisfactory to such committee, that by reason of conditions beyond his control he will be prevented, because of the regulation issued, from shipping or having shipped a percentage of his crop of grapes equal to the percentage determined as aforesaid of all grapes permitted to be shipped from his district. The certificate shall permit such grower to ship, or have shipped, a percentage of grapes equal to the percentage determined as aforesaid.

(c) In the event the Industry Committee determines that, by reason of general crop failure or other general unusual conditions within a particular district, it is not feasible or would not be equitable to issue exemption certificates to growers within such district on the basis set forth in paragraph (b) of this section, it shall issue such certificates on the basis of the average of the percentages, as determined in paragraph (b) of this section, of the crops of grapes permitted to be shipped from both districts. An exemption certificate shall thereafter be issued by the Industry Committee to any grower who furnishes proof, satisfactory to such committee, that by reason of conditions beyond his control he will be prevented, because of the regulation issued, from shipping or having shipped a percentage of his crop of grapes equal to the average of the percentages determined as aforesaid. The certificate shall permit such grower to ship, or have shipped, a percentage of his crop of grapes equal to the average of the percentages determined as aforesaid.

(d) If any grower is dissatisfied with the action of the Industry Committee taken with respect to his application for an exemption certificate, such grower may appeal to the Secretary: *Provided*, That such appeal shall be made promptly. The Secretary may, upon an appeal made as aforesaid, modify or reverse the action of the committee. The authority of the Secretary to supervise and control the issuance of exemption certificates is unlimited and plenary; and any determination by the Secretary with respect to an exemption certificate shall be final and conclusive.

(e) The Industry Committee shall, from time to time, submit to the Secretary reports stating in detail the number of exemption certificates issued, the quantity of grapes thus exempted, and such additional information with respect thereto as the Secretary may request.

MINIMUM STANDARDS OF QUALITY AND MATURITY

§ 951.55 *Recommendation.* Whenever the Industry Committee deems is advisable to establish and mainatin in effect during any period minimum standards of quality or maturity, or both, governing the shipment of grapes pursuant to §§ 951.55 and 951.56, it shall so recommend to the Secretary. Each such recommendation of the committee shall be in terms of (a) freedom of the grapes from material impairment of shipping quality; (b) freedom of the grapes from material impairment of edible quality; (c) freedom of the grapes from serious damage to appearance; (d) minimum maturity requirements; or (e) any combination of the foregoing. With each such recommendation, the committee shall submit to the Secretary the information and data on which such recommendation is predicated; and the committee shall also submit to the Secretary

such other information as he may request. The committee shall give prompt notice to handlers and growers of any such recommendation.

§ 951.56 *Establishment.* Whenever the Secretary finds, from the recommendation and information submitted by the Industry Committee, or from other available information, that to establish minimum standards of quality or maturity, or both, for grapes and to limit the shipment of grapes during any period to those meeting the minimum standards would be in the public interest and would tend to effectuate the declared policy of the act, he shall establish such standards, designate such period, and so limit the shipment of such grapes. The Secretary shall immediately notify the Industry Committee of the issuance of such regulation, and said committee shall give such notice thereof as may be reasonably calculated to bring such regulation to the attention of the handlers and growers.

INSPECTION AND CERTIFICATION

§ 951.58 *Inspection.* During any period in which shipments of grapes are regulated pursuant to §§ 951.50 through 951.56, each handler shall, prior to making each shipment of grapes, cause such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Promptly thereafter, each such shipper shall submit or cause to be submitted to the Industry Committee a copy of the shipping point inspection certificate issued by the Federal-State Inspection Service showing the grade and size of the grapes contained in such shipment: *Provided*, That this provision shall not be applicable to a handler who ships grapes which have been so inspected and the copy of such inspection certificate has been submitted to the Industry Committee.

REGULATION OF DAILY SHIPMENTS

§ 951.60 *Definitions.* As used in §§ 951.60 through 951.68, the following terms have the following meanings:

(a) "Railroad assembly point" means any railroad concentration point designated by the Industry Committee.

(b) "Cold storage assembly point" means any cold storage plant in the State of California.

(c) "Time of arrival" or "arrival time" means (1) the actual day and hour of delivery of grapes in a railroad car at a railroad assembly point, if such grapes are not precooled at such assembly point; or (2) the actual day and hour when precooling of grapes in a railroad car is completed, if such grapes are precooled at a railroad assembly point; or (3) the day and hour at the end of such period of time subsequent to the actual delivery of a car of grapes at a cold storage assembly point as the Industry Committee may prescribe; or (4) in the event a handler notifies the Industry Committee that grapes in cold storage are to be considered available in cold storage assembly points, the day and hour at the end of such period of time after the handler has given such notice as the Industry Committee may prescribe, which period shall not exceed five calendar days; or (5), for the purpose of including such additional conditions as may be developed, the day and hour of such period of time prior or subsequent to the actual delivery of grapes to assembly points as the Industry Committee may prescribe with the approval of the Secretary.

(d) "Arrival date" means, when used with reference to any one of the situations enumerated in paragraph (c) (1), (2), (3), (4), or (5) of this section, the day which is part of the time specifications provided for therein.

(e) "Billing date" means (1), when used with reference to grapes in a railroad car shipped to a railroad assembly point but not precooled at such assembly point, the date shown on the bill of lading; or (2), when used with reference to grapes in a railroad car shipped to a railroad assembly point and precooled at such assembly point, one calendar day after the date shown on the bill of lading; or (3), when used with reference to grapes delivered to a cold storage assembly point, the date at the end of such period of time, subsequent to the actual delivery of the car of grapes at such cold storage point, as the Industry Committee shall prescribe; or (4), when used with reference to grapes in cold storage, such date at the end of such period of time subsequent to the time that the handler of such grapes has given notice to the Industry Committee that such grapes are to be considered available in cold storage assembly points, as the said committee shall prescribe, which period shall not exceed five calendar days; or (5), for the purpose of including such additional conditions as may be developed, the date at the end of such period of time prior or subsequent to the date shown on the bill of lading, or the date of actual delivery at an assembly point, as the Industry Committee may prescribe with the approval of the Secretary.

(f) "Cold storage" means retention of grapes under refrigeration in a storage warehouse for such minimum period of time, at such place or under such conditions, as the Industry Committee may prescribe: *Provided*, That in the event the said committee prescribes a minimum period of time which is in excess of four calendar days, the period of time prescribed shall be subject to the approval of the Secretary.

(g) "Car" or "carload" means such quantity of grapes as may be specified by the Industry Committee.

(h) "Advisable" means the quantity of grapes advisable to be shipped each day during a regulation period, as determined by the Secretary pursuant to § 951.62.

(i) "Handler" is synonymous with "shipper" and means any person (except a common carrier of, or an operator of a cold storage for, grapes owned by another person) who, as owner, agent, or otherwise, ships or handles grapes, or causes grapes to be shipped or handled, in fresh form.

(j) "Handle" is synonymous with "ship" and means to transport by railroad, or to prepare for transportation by railroad (which shall include, but not be limited to, packaging and precooling), or to load in a conveyance for delivery to assembly points or to transport to assembly points, for transportation by railroad, in the current of commerce between the State of California and any point outside thereof on the continent of North America, or so as directly to burden, obstruct, or affect such commerce.

(k) "Grapes controlled" means grapes to which the handler has legal title or which the handler has been authorized by the owner to ship.

(l) "Assembly points" means railroad assembly points and cold storage assembly points.

§ 951.61 *Recommendation of regulation.* The Industry Committee shall, from time to time, investigate the supply and demand conditions for grapes. Whenever the said committee determines that (a) the supply of grapes for shipment exceeds the demand therefor or the rate of flow of shipments of grapes to markets will be irregular, which may result in the quantity of grapes shipped during certain parts of a season being in excess of the demand for grapes at such time; and (b) the regulation of shipments of grapes pursuant to §§ 951.50 through 951.52 will be inadequate or insufficient to correct such conditions; and (c) it is advisable to limit the total daily shipments of grapes during any specified period, the said committee shall recommend to the Secretary the establishment of a regulation period during which the shipment of grapes shall be limited as provided in §§ 951.60 through 951.68. At the time of making such recommendation, the Industry Committee shall report to the Secretary (1) the period during which the proposed regulation is to be effective; (2) the expected maximum and average daily shipments of grapes during such period; (3) the total quantity of grapes advisable to be shipped each day during the regulation period; and (4) the information upon which such recommendation and reports are based, together with such other information as the Secretary may request.

§ 951.62 *Establishment of regulation.* Whenever the Secretary shall find, from the recommendation, reports, and information submitted by the Industry Committee, or from other available information, that to limit the total quantity of grapes that may be shipped each day, as provided in §§ 951.60 through 951.68, will tend to effectuate the declared policy of the act, he shall establish such a regulation for a specified period. At the time of the establishment of such limitation, the Secretary shall determine (a) the period of time during which the daily shipments of grapes are to be limited and (b) the total quantity of grapes advisable to be shipped each day during the specified regulation period. The Secretary shall promptly notify the Industry Committee of the establishment of the regulation period and of the total quantity of grapes advisable to be shipped each day thereof, and such committee shall give such notice thereof as may be reasonably calculated to bring such information to the attention of all interested persons.

§ 951.63 *Retention of cars in assembly points.* During any regulation period established pursuant to § 951.62, each handler shall file with the railroad carrier an order directing it to stop each carload of the respective handler's grapes at a railroad assembly point, or, if any handler desires to have any shipment of grapes regulated at a cold storage assembly point, such handler may deliver such grapes to the cold storage assembly point. No handler shall have the shipment of any carload of grapes continued from an assembly point until the carload is released by the Industry Committee from the railroad assembly point or from the cold storage assembly point, as the case may be. Grapes released by the committee from cold storage assembly points shall not be detained by the committee at railroad assembly points. The provisions of this section shall not be applicable to grapes which have been shipped in railroad cars at a time when a regulation period established pursuant to § 951.62 is not in effect.

§ 951.64 *Reports by handlers.* During the effective period of any regulation established pursuant to §§ 951.60 through 951.68, each handler shall report promptly, or cause to be reported promptly, to the Industry Committee any of the following information requested by it: (a) The quantity of grapes loaded in railroad cars for shipment to any railroad assembly point; (b) the date of the bill of lading covering each such carload of grapes; (c) the quantity of grapes loaded in a conveyance for shipment to assembly points or delivered to assembly points; and (d) the time of delivery of each carload of grapes at any assembly point. Each handler shall furnish, or authorize cold storage companies to furnish, to the Industry Committee, the time of actual delivery to cold storage of each railroad car of grapes controlled by him, including a statement as to whether such car was so delivered for the purpose of precooling preparatory to being shipped immediately or for the purpose of storage.

§ 951.65 *Shipments from assembly points.* (a) The quantity of grapes which shall be released by the Industry Committee any day during a regulation period established pursuant to § 951.62, from all assembly points for continued shipment, shall, except as otherwise specifically provided in §§ 951.60, through 951.68 be the total advisable quantity of grapes to be shipped that day, as determined by the Secretary.

(b) Such daily advisable quantity of grapes shall be released from assembly points by the Industry Committee in accordance with the following method. Each carload shall be released in the order of priority of billing date. In the event the said committee determines that it is not advisable to use the billing date for the release of grapes from assembly points, it may recommend to the Secretary that such grapes shall be released in order of arrival date. Thereafter, upon the Secretary's approval of such recommendation, the said committee shall use the arrival date for the release of grapes from assembly points; and either the billing date or the arrival date is hereinafter referred to as "date." If, on a given day, only part of the grapes of a particular date which are available for release can be released pursuant to the foregoing provision, then the percentage of any such grapes controlled by a handler which shall be released shall be the percentage obtained when that part of the total quantity of grapes of such date available for release, which can be released on the applicable day pursuant to the foregoing provisions, is divided by the total quantity of grapes of such date available for release: *Provided*, That grapes of such date, the continued shipment of which from assembly points cannot commence for any reason, shall not be included in the quantity of grapes used in calculating such percentages. If the quantities of grapes of individual shippers, to be released on a particular day, include fractions of a carload, the Industry Committee shall release a full carload for each of a sufficient number of shippers having fractional parts of a carload eligible for release to permit the release of a quantity of grapes which shall be less than one carload in excess of the advisable quantity for shipment that day: *Provided*, That the release of full carloads for fractional parts of a carload shall be in the order of the largest to the next smaller fractional part of a carload of grapes eligible for release for any shipper: *Provided, further*, That if the total quantity of grapes of a particular shipper released on a particular day is in excess of or less than the quantity of such shipper's grapes to be released that day, determined or calculated as provided in this section, deductions from or additions to the quantities of such shipper's grapes to be released on the next succeeding days shall be made until the sum of such deductions or additions, respectively, shall equal the sum of such excess releases or under releases. If the total quantity of grapes actually released on a particular day is in excess of the quantity advisable for shipment on such day, the quantity released on the following day shall be decreased by the amount of such excess quantity.

(c) In the event the Industry Committee determines that it is not expedient to release the daily advisable quantity of grapes pursuant to paragraph (b) of this section, it may so recommend to the Secretary and, upon the approval of the Secretary, the following method for releasing such grapes shall be used by the committee: The first carload of grapes in terms of time of arrival at any assembly point shall be the first carload released for shipment from all assembly points on any particular day, and succeeding carloads shall be released for shipment in the order of time of arrival until the total advisable quantity for the particular day has been released: *Provided*, That if the Industry Committee finds that the release of the advisable on any day results in the release for continued shipment of a quantity of grapes which is less than a carload, the said committee shall release, in addition to the advisable, a quantity of grapes sufficient to permit the continued shipment of a full carload of grapes; in which event, the said committee shall deduct from the advisable for the succeeding day a quantity of grapes equal to such amount released in excess of the advisable.

(d) Notwithstanding the foregoing provisions with respect to the limitations upon the release of a quantity of grapes in excess of the advisable, the maximum time that cars may be held at assembly points shall be 72 hours or such other period of time less than 72 hours as may be prescribed by the Industry Committee and approved by the Secretary.

(e) Whenever any handler has one or more carloads of grapes at assembly points which have priority of shipment at a given time, and such handler also has one or more carloads of grapes at assembly points which do not have such priority, such handler may substitute, pursuant to such regulations as may be adopted by the Industry Committee, any carload without priority for any carload having priority.

(f) Any handler who has delivered grapes to cold storage for the purpose of storage, except during a limitation period established pursuant to paragraph (c) or (e) of § 951.66, shall, if he desires to continue the shipment of such grapes, so report in writing to the Industry Committee. Thereafter, such grapes shall be considered by the committee as being at a cold storage assembly point, shall be assigned a date or given an arrival time, as the case may be, and shall be subject to release in accordance with the provisions of this section if they meet the requirements of the grade or size regulations applicable to grapes shipped to destinations on the continent of North America and in effect at the time the grapes are released for continued shipment. Any grapes delivered to cold storage pursuant to paragraph (f) of § 951.66, during a limitation period established pursuant to paragraph (c) or (e) of § 951.66, or any grapes delivered to cold storage for the purpose of storage which do not meet the aforesaid grade or size regulations, and which the handler thereof desires to ship from such storage, shall, notwithstanding that such grapes meet the requirements of the grade or size regulations applicable to grapes shipped from cold storage, only be eligible for release for continued shipment on any particular day during a regulation period established pursuant to § 951.62, when the quantity of grapes eligible for release from assembly points on such day is less than the quantity of grapes advisable to be shipped on such day. In that event, the release of such grapes from cold storage for continued shipment shall be in the same order that such grapes were placed in storage, and within the limits of the quantity of grapes advisable to be released that day, less the quantity eligible for release from assembly points: *Provided*, That any quantity of grapes in cold storage may be substituted, pursuant to the regulations adopted by the Industry Committee, for the same quantity of grapes eligible to be released from assembly points, or from cold storage pursuant to the foregoing provisions, except that grapes which have not been in cold storage at least ten days shall not be so re-

leased unless such grapes were delivered to cold storage when no limitation period established pursuant to paragraph (c) or (e) of § 951.66 was in effect and such grapes meet the requirements of the grade and size regulations applicable to grapes shipped to destinations on the continent of North America and in effect at the time such grapes are released.

(g) Except as provided in §§ 951.60 through 951.68, the Industry Committee shall not release from assembly points a quantity of grapes in excess of the advisable for the respective day, as determined by the Secretary.

§ 951.66 *Regulation of loading or packaging.* (a) Whenever the Industry Committee determines that the quantity of grapes at assembly points is, or in view of the quantity of grapes loaded or en route to assembly points soon will be, substantially in excess of the quantity advisable for shipment each day as determined by the Secretary pursuant to § 951.62, and it is advisable in order to effectuate the declared policy of the act to regulate the loading or packaging of grapes for shipment to assembly points during a specified period, the Industry Committee shall recommend to the Secretary the establishment of a regulation period during which time the loading or packaging of grapes for shipment to assembly points shall be limited.

(b) At the time of making any such recommendation, the Industry Committee shall determine and report to the Secretary (1) the daily shipments of grapes to assembly points immediately preceding such recommendation; (2) the total quantity of grapes at assembly points; (3) the estimated total quantity of grapes that will be en route to, and at, assembly points on the day the regulation of loading or packaging is recommended to be effective; (4) all other information upon which such recommendation and report are based; and (5) such information as the Secretary may request. If less than a complete limitation of loading of grapes for shipment to assembly points is recommended, the Industry Committee shall determine and report to the Secretary a representative period, during the then current season, to be used as the base period in connection with a regulation limiting the loading of grapes, established pursuant to paragraph (c) of this section; the quantity of grapes loaded, or the estimated quantity that will be loaded, by all handlers, during the representative period, for shipment to assembly points; and the recommended quantity of grapes to be loaded for shipment to assembly points each day of the recommended limitation period. The said committee shall give adequate notice to all handlers of any such determinations.

(c) Whenever the Secretary shall find, from the recommendation, reports, and information submitted by the Industry Committee, or from other available information, that to limit the loading of grapes for shipment to assembly points during a specified period will tend to effectuate the declared policy of the act, the Secretary shall limit the quantity of grapes to be loaded, during each day of a specified period, for shipment to assembly points: *Provided*, That no regulation which limits completely such loading of grapes shall be in effect for a period longer than 48 hours. In the event the Secretary establishes such a regulation, the Secretary shall determine (1) the period of regulation; (2) if the regulation is less than a complete limitation, the representative period during the then current season to be used as the base period; and (3) the quantity of grapes to be loaded for shipment to assembly points each day of the limitation period: *Provided*, That such quantity shall be sufficiently large, or the length of the limitation period sufficiently short, to insure the shipment of a quantity of grapes equal to the quantity advisable for shipment, determined by the Secretary pursuant to § 951.62, from assembly points each day during, and immediately after, such limitation period. In making such determinations, the Secretary shall fix the quantity to be loaded each day of such a period as a specific quantity or as a percentage of the daily average quantity of grapes loaded for shipment to assembly points in the base period by all handlers. During any such limitation period, the quantity of grapes which each handler may load for shipment to assembly points on a particular day of the limitation period shall be the same percentage of the daily average quantity of grapes, which such handler loaded during the base period, as the percentage that the quantity to be loaded that day, as determined by the Secretary, is of the daily average quantity of grapes loaded for shipment to assembly points during the base period by all handlers. In the event a handler did not load grapes for shipment to assembly points on each day during the base period, such handler may include with the quantity of grapes loaded for such shipment during the base period, the quantity loaded for shipment to assembly points on the same number of days preceding the base period on which he did so load grapes as the number of days during the base period on which he did not so load grapes; and the quantity so loaded by each such handler on such days preceding the base period shall, in computing the aforesaid percentage, be included in the quantity so loaded by all handlers during the base period. If the percentage is not determined by the Secretary, the Industry Committee shall compute, for each day of the limitation period, the percentage that the quantity of grapes to be loaded for shipment to assembly points on the particular day is of the daily average quantity loaded by all handlers for shipment to assembly points during the base period. The Industry Committee shall give adequate notice to handlers of the percentage.

(d) Any handler who is dissatisfied with the committee's recommendation as to the period to be used as the base period, as provided in paragraph (b) of this section, may appeal to the Secretary. In which event, any such handler taking such appeal shall submit a written statement to the Secretary which shall fully set forth the quantity of grapes loaded by such handler for shipment, during the said base period, to assembly points, and the inapplicability of such base to the said handler; and a copy of such statement shall be delivered to the Industry Committee. Immediately upon receipt of such copy, the said committee shall submit a report to the Secretary on the merits of such appeal. The Secretary may suspend the application of the base period to any such handler and assign to such handler a different base period, or the Secretary may prescribe a daily quantity of grapes which such handler may load for shipment to assembly points during each day of the limitation period.

(e) Whenever the Secretary shall find, from the recommendation, reports, and information submitted by the Industry Committee, or from other available information, that to limit completely the packaging of grapes to be shipped to assembly points, during any specified period (which period shall not exceed 48 hours), will tend to effectuate the purpose of the act, the Secretary shall so limit the packaging of such grapes. The Secretary shall give the Industry Committee immediate notice of the issuance of any such regulation and the said committee shall give adequate notice thereof to all handlers. During any such period, no handler shall package grapes for shipment to assembly points.

(f) Any handler may ship grapes to cold storage, or package grapes for shipment to cold storage, for the purpose of storage, during a limitation period established pursuant to paragraph (c) or (e) of this section, if such grapes meet the requirements of the applicable grade or size regulations established pursuant to §§ 951.50 through 951.52: *Provided*, That such handler shall first secure a permit therefor from the Industry Committee. Such permit, which shall be granted upon application, shall be made in such manner as may be prescribed by the Industry Committee. Grapes so shipped to cold storage, for the purpose of storage, during a limitation period established pursuant to paragraphs (c) or (e) of this section, shall not, except pursuant to paragraph (f) of § 951.65, be released for continued shipment during any day of a regulation period established pursuant to § 951.62.

§ 951.67 *Exemption for part cars.* A shipment of grapes which is not in excess of 300 standard packages, or an equivalent quantity thereof in weight, shall be exempt from the regulations established pursuant to § 951.62.

§ 951.68 *Apportionment among growers.* Each handler shall apportion equitably among the growers whose grapes he handles the quantity of grapes such handler is permitted to load each day pursuant to paragraph (c) or (d) of § 951.66.

LIMITATION OF SHIPMENTS BY TRUCK

§ 951.70 *Limitation.* (a) Whenever a regulation limiting the packaging of grapes is in effect pursuant to paragraph (e) of § 951.66, no handler shall package grapes for shipment by truck. During such a regulation period no handler shall ship grapes by truck unless the grapes were packaged prior to such

regulation period and then only pursuant to a permit issued by the Industry Committee in accordance with the provisions of this subpart.

(b) The Industry Committee shall issue a permit to any handler which will enable such handler to load and transport grapes by truck during a regulation period limiting the packaging of grapes, established pursuant to paragraph (e) of § 951.66: *Provided*, That such handler (1) makes written application for such permit; and (2) submits evidence satisfactory to the Industry Committee that the grapes to be shipped had been packaged prior to the effective time of such regulation period. Any such application shall include such information as may be required by the Industry Committee pursuant to uniform rules.

(c) In the event the Secretary establishes a regulation limiting the loading of grapes pursuant to paragraph (c) of § 951.66, no handler shall ship grapes by truck, during any day of such limitation period, in excess of the average daily quantity of grapes which such handler shipped by truck during such period of time during the then current season as shall be established by the Industry Committee and approved by the Secretary; except that any such handler may ship during any day or days during the effective period of the regulation a total of the quantities which, pursuant to the foregoing provision, he would be permitted to ship each day of such period: *Provided*, That a handler who ships by truck, and who has made no shipments during a particular season prior to the effective date of a regulation limiting the loading of grapes, may apply to the said committee for a certificate (which shall be issued by said committee in accordance with rules adopted by it and approved by the Secretary) which will permit such handler to ship by truck during the applicable regulation period an equitable quantity of grapes. A shipment of grapes by truck which is not in excess of 25 standard packages or an equivalent net weight quantity shall be exempt from the provisions of this paragraph; and the Industry Committee may, with the approval of the Secretary, exempt from the provisions of this paragraph any shipment of grapes, shipped by truck, in excess of the aforesaid quantity.

(d) During a limitation period established pursuant to paragraph (c) or (e) of § 951.66, no handler shall deliver grapes to cold storage (as defined in paragraph (f) of § 951.60), for subsequent shipment by truck, except pursuant to a permit therefor issued by the Industry Committee; and such permit shall be issued by the committee upon application.

MODIFICATION, SUSPENSION, OR TERMINATION

§ 951.73 *Modification, suspension, or termination.* Whenever the Industry Committee deems it advisable to recommend to the Secretary the modification, suspension, or termination of any or all of the regulations established pursuant to this subpart, it shall so recommend to the Secretary. If the Secretary finds upon the basis of such recommendation or from other available information that to modify such regulations will tend to effectuate the declared policy of the act, he shall so modify such regulations. If the Secretary finds, upon the basis of such recommendation or upon the basis of other available information that any such regulations obstruct or do not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulations. The Secretary shall immediately notify the Industry Committee, and such committee shall promptly give adequate notice to handlers and growers, of the issuance of each order modifying, suspending, or terminating any such regulations. In like manner and upon the same basis the Secretary may terminate any such modification or suspension.

REPORTS BY HANDLERS

§ 951.75 *Reports.* For the purpose of enabling the Industry Committee to perform its functions under this subpart, each handler shall furnish, or authorize any or all railroad, transportation, and cold storage agencies to furnish, to the confidential employees of the Industry Committee, complete information in such form and at such times and substantiated in such manner as shall be prescribed by the Industry Committee, with regard to each shipment of grapes. Such reports may include the number of cars ordered; the time of departure of each shipment of grapes; the time of arrival of each shipment of grapes at railroad and cold storage assembly points; the name of the shipper; the car number; the number of packages of grapes or the billing weight thereof and the grade; the grower for whom such grapes are shipped; the point of origin; and the destination and any diversion of the shipment of any carload of grapes made through any or all agencies to any auction market. Such information shall be compiled by the confidential employee, and promptly made available in summary form to all handlers and other interested persons who request a copy thereof: *Provided*, That such compilation or summary shall not reveal the identity of the individual informants, shippers, and growers. Such confidential employee shall not disclose, to any person other than the Secretary, any information that may be obtained pursuant to this section except in the aforesaid manner.

EFFECTIVE TIME AND TERMINATION

§ 951.77 *Effective time.* The provisions of this subpart shall become effective August 20, 1940, and shall continue in force until terminated in one of the ways specified in § 951.78.

§ 951.78 *Termination.* (a) The Secretary may at any time terminate the provisions of this subpart by giving at least 1 day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that any such provision obstructs or does not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any current marketing period whenever he finds that such termination is favored by a majority of the growers who, during such current marketing period, have been engaged in the production of grapes for market: *Provided*, That such majority have, during such period, produced for market more than 50 percent of the total volume of grapes produced for market during such period; but such termination shall be effective only if notice thereof is given on or before April 1 of such current marketing period.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 951.79 *Proceedings after termination.* (a) Upon the termination of the provisions of this subpart, the members of the Industry Committee then functioning shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all funds and property then in the possession or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements, or deliver all funds and property on hand, together with all books and records of the Industry Committee and the trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any funds collected for expenses pursuant to the provisions of this subpart and held by such trustees or such other person, over and above amounts necessary to meet outstanding obligations and the expenses incurred necessarily by the trustees or such other person in the performance of their duties under this subpart, shall, as soon as practicable after the termination of this subpart, be returned to the handlers pro rata in proportion to their contributions made pursuant to § 951.46.

(d) Any person to whom funds, property, or claims have been delivered by the Industry Committee or its members upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members of the committee or upon the trustees.

MISCELLANEOUS

§ 951.85 *Compliance.* Except as otherwise specifically provided in this subpart, no handler shall ship grapes, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this subpart, and no handler shall ship grapes except in conformity with the provisions of this subpart.

§ 951.86 *Right of the Secretary.* Any rules, regulations, or determinations of the Industry Committee which are submitted to the Secretary for his approval, pursuant to the provisions of this subpart, may be modified or changed by the Secretary prior to such approval, without further action thereon by the said committee.

§ 951.87 *Grapes for charitable purposes.* Nothing contained in this subpart shall be construed to authorize any limitation of the right on the part of any person to ship grapes for consumption by charitable institutions or for distribution by relief agencies; nor shall any assessment be levied on grapes so shipped. The Industry Committee may prescribe such regulations as may be deemed necessary by it to prevent grapes shipped for such purposes from entering the commercial fresh fruit channels of trade contrary to, or in violation of, the provisions of this subpart.

§ 951.88 *Liability of Industry Committee members.* No member, alternate member, or employee of the Industry Committee shall be held liable, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty.

§ 951.89 *Agents.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 951.90 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination hereof, except with respect to acts done under and during the existence of this subpart.

§ 951.91 *Separability.* If any provision of this subpart is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 951.92 *Derogation.* Nothing contained in this subpart is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 951.93 *Amendments.* Amendments to this subpart may be proposed, from time to time, by the Industry Committee or by the Secretary.

§ 951.94 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the United States, or Secretary, or of any other person with respect to any such violation.

### SUBPART—RULES AND REGULATIONS

#### DEFINITIONS

§ 951.100 *Order.* "Order" means Order No. 51, as amended (7 CFR Part 951), regulating the handling of Tokay grapes grown in California.

§ 951.101 *Marketing agrement.* "Marketing agreement" means Marketing Agreement No. 93, as amended.

§ 951.102 *Terms.* Terms used in this subpart shall have the same meaning as when used in the amended marketing agreement and order.

§ 951.103 *Standard package.* "Standard package" means the standard grape lug No. 37G specified in section 828.53 of the Agricultural Code of California.

§ 951.104 *Crop.* "Crop" means a person's total production of Tokay grapes for any year, exclusive of the grapes of a size, grade, or quality ordinarily sold for conversion into by-products or unharvested.

§ 951.105 *Railroad assembly points.* "Railroad assembly points" means the railroad concentration points designated as follows:

SOUTHERN PACIFIC RAILROAD

(1) Colton.
(2) Gerber.
(3) Colfax.
(4) Roseville.

WESTERN PACIFIC RAILROAD

(1) Stockton.
(2) Portola.

SANTA FE RAILROAD

Bakersfield.

§ 951.106 *Time of arrival at a cold storage assembly point.* "Time of arrival at a cold storage assembly point" means 48 hours subsequent to the actual delivery of a car of grapes or the equivalent thereof at a cold storage assembly point, and the time of arrival of a car of grapes which were received at said cold storage assembly point in diverse quantities shall be computed as 48 hours subsequent to the actual hour and date the last package of said grapes is delivered to such cold storage assembly point.

§ 951.107 *Billing date.* "Billing date" with respect to a car of grapes or the equivalent thereof at a cold storage assembly point means the second calendar day subsequent to the day of actual delivery of such grapes at the cold storage assembly point, and any car of grapes which were received at the cold storage assembly point in diverse quantities shall have its billing date computed as the second calendar day subsequent to the day the last package of said car is delivered to the cold storage assembly point.

§ 951.108 *Cold storage grapes.* "Cold storage grapes" means (a) grapes placed in cold storage and designated storage grapes by the shipper thereof; (b) any shipment of grapes placed in a cold storage assembly point for pre-cooling which is not reported to the Industry Committees or its designated agent within 48 hours after actual delivery time to said cold storage assembly point; and (c) any shipment of grapes which is released from cold storage assembly points in accordance with § 951.65 and not loaded for shipment within 48 hours after the shipper is notified of its release from said cold storage assembly point.

§ 951.109 *Cold storage warehouse.* "Cold storage warehouse" means any cold storage warehouse within or without the State of California. If a cold storage warehouse outside the State of California is used by any shipper for the cold storage of grapes such shipper shall authorize such cold storage operator outside the State of California to release such grapes only upon the direction of the Industry Committee or its manager. Grapes placed in cold storage shall not be shipped therefrom except as provided by §§ 951.65 and 951.70.

§ 951.110 *Car or carload of grapes.* "Car or carload of grapes" means any lot of grapes consisting of not less than 301 standard packages, nor more than 1,226 standard packages.

#### GENERAL

§ 951.118 *Communications.* Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Industry Committee, all reports, applications, submittals, requests and communications in connection with the marketing agreement and order shall be addressed to Industry Committee, P. O. Box 877, Lodi, California.

#### NOTICE OF RECOMMENDATIONS AND REGULATIONS; EXEMPTION CERTIFICATES

§ 951.120 *Notice of recommendation.* Notice of each recommendation, made by the Industry Committee to the Secretary, with respect to regulation by grades and sizes, by minimum standards of quality and maturity, or of daily shipments, and of each such recommendation to modify, suspend, or terminate a regulation, shall be given by the Industry Committee by having a general statement of the contents of the recommendation published once as a news item in a newspaper of general circulation in the City of Lodi, California, and once in a newspaper of general circulation in the City of Sacramento, California.

§ 951.121 *Notice of regulation.* Notice of each regulation by grades and sizes, by minimum standards of quality and maturity, or of daily shipments, and of each modification, suspension, or termination of a regulation, shall be given by the Industry Committee by having a general statement of the contents of the regulation, or modification, suspension, or termination of a regulation, as the

case may be, mailed to each handler whose name appears on the records of the Industry Committee for the current year, and by having a general statement of the contents of the regulation, or modification, suspension, or termination, published once as a news item in a newspaper of general circulation in the city of Lodi, California, and once in a newspaper of general circulation in the city of Sacramento, California.

§ 951.122 *Exemption certificates*—(a) *Announcement of procedural rules.* Procedural rules with respect to the issuance of exemption certificates shall be announced by the Industry Committee by depositing a general statement of the contents of the rules in the United States mail in a stamped envelope addressed one to each handler whose name appears on the records of the Industry Committee for the current year, and by having a general statement of the contents of the rules published once as a news item in a newspaper of general circulation in the city of Lodi, California, and in a newspaper of general circulation in the city of Sacramento, California.

(b) *Application.* Applications for exemption certificates shall be submitted to the Industry Committee and shall contain the following information on Form E–1, "Grower Application for Exemption Certificate," which may be obtained from the Industry Committee:

(1) Location of vineyard from which grapes are to be shipped pursuant to the exemption certificate.

(2) The number of acres and age of vines of Tokay grapes for which exemption is requested.

(3) Total crop of Tokay grapes for which exemption is requested in units of standard packages.

(4) The number of standard packages of Tokay grapes applicant has available for shipment during the remainder of the regulation period, grading U. S. No. 1 grade or better, and the number grading below U. S. No. 1 grade.

(5) Number of standard packages of Tokay grapes grading U. S. No. 1 grade or better, and the number grading below U. S. No. 1 grade, which applicant has sold or otherwise disposed of from the date the grade and size order (from which exemption is requested) became effective to the date of the application.

(6) The reasons why the quantity of Tokay grapes for which exemption is requested do not meet the requirements of the grade and size regulation.

(7) Name of shipper if different from applicant.

(8) Quantity of Tokay grapes of the applicant shipped during the previous season by any or all shippers.

(9) Proportion of the crop of the applicant for each year of the 3 years immediately preceding the current season sold by the applicant for conversion into by-products or unharvested.

(10) Such additional information as the Industry Committee may require in order to determine whether the applicant is entitled to an exemption certificate.

(c) The Industry Committee shall promptly verify all statements contained in the application for an exemption certificate, and determine whether an application shall be approved or disapproved. Such decision shall be evidenced by the issuance to the applicant of an exemption certificate or, in the case of disapproval, by a written notice of such disapproval.

(d) In the event the Industry Committee finds and determines, from proof satisfactory to the committee, that the applicant is entitled to an exemption certificate, the committee shall issue, or authorize the issuance of an exemption certificate, which shall permit the respective applicant to ship a quantity of the restricted or prohibited grades or sizes sufficient to enable said grower to ship as large a proportion of his crop of Tokay grapes as the average for all growers in the district in which is located the vineyard(s) for which an application has been made for an exemption certificate.

(e) Each exemption certificate issued by the Industry Committee shall be on Form E–2, "Grower Exemption Certificate." The exemption certificate shall be signed by the secretary or assistant secretary of the Industry Committee. Each exemption certificate shall be issued in quadruplicate; one copy shall be delivered to the grower; one copy shall be delivered to the shipper designated by the grower to receive a copy; one copy shall be delivered to the field representative of the Industry Committee; and one copy of the exemption certificate shall be retained as part of the permanent records of the Industry Committee.

(f) Each shipper handling Tokay grapes pursuant to an exemption certificate shall keep an accurate record of all shipments, made pursuant to the certificate, in the appropriate blank spaces provided for therein. Such record shall include with respect to each shipment, the date, the number of the railroad car or license number of the truck in which such shipment is made, the name of the shipper, the shipping point, the consignment number, and the quantity of each size and grade of Tokay grapes in such shipment. When the quantity of grapes authorized by the exemption certificate has been shipped or shipments pursuant to an exemption certificate have been completed, the exemption certificate containing the record of shipment shall be submitted promptly to the Industry Committee or its duly authorized representative.

REGULATION OF DAILY SHIPMENTS

§ 951.130 *Cars substituted for priority cars.* Any handler having one or more carloads of grapes at assembly points which have priority on a given date and one or more carloads of grapes at assembly points which do not have priority, may substitute a carload without priority for a carload having priority only if such substitution is made before 10:00 a. m. of that day.

§ 951.131 *Computation of 72-hour limitation.* The time that a car of grapes is held at a railroad assembly point, within the meaning of § 951.65 (d), shall be computed from the time that said car could have departed from said assembly point under regular railroad freight schedules on the first day following the billing date of said car. No car of grapes eligible for release shall be held at a railroad assembly point longer than 72 hours.

§ 951.132 *Substitution of cold storage cars.* Any handler having one or more carloads of grapes in cold storage and one or more carloads of grapes eligible to be released from assembly points or from cold storage, may at any time substitute a carload in cold storage and not eligible for release for a carload in assembly point or in cold storage and eligible for release if application therefor is made to the Industry Committee, setting forth identifying information concerning the several lots of grapes for which the substitution is to be made.

REGULATION OF LOADING OR PACKAGING

§ 951.140 *Application for storage permit.* Any handler who desires to ship grapes to cold storage, or to package grapes for shipment to cold storage, for the purpose of storage, during a loading or packaging limitation period may make application for a permit therefor to the Industry Committee. Such application shall be in writing and contain the following information: the name and place of business of said shipper, the grower from whom such grapes are to be received, number of packages received, or shipped to storage and number of packages for which application for storage is made, and place where such grapes are to be stored.

§ 951.141 *Issuance of storage permit.* The Industry Committee, or its authorized agent, upon receipt of application and evidence satisfactory to the committee that information submitted in said application is true and correct, shall issue a permit on the form, "Storage permit." Said permit shall be issued in triplicate; two copies to be furnished the shipper, and one copy retained by the committee.

LIMITATION OF SHIPMENTS BY TRUCK

§ 951.150 *Permit to load or transport grapes*—(a) *Application for permit.* Any person may apply to the Industry Committee for a permit to load and transport Tokay grapes by truck during a limitation period completely limiting the packaging of Tokay grapes, if such grapes were packaged prior to the time such limitation period became effective. Such application shall contain the following information:

(1) The name and place of business of such applicant.

(2) The number of packages for which permit is requested.

(3) The time when such grapes were packaged.

(4) The location of such grapes so that packaging prior to the time of the limitation period may be established.

(5) The destination, truck license number, and name of trucker who is expected to transport such shipment.

(b) *Issuance of permit.* The committee shall grant such permit only (1) if application is made to the committee or its authorized agent prior to the beginning of a limitation period, (2) if the information submitted with such appli-

cation is properly substantiated, and (3) if the grapes to be shipped had been packaged prior to the effective time of such limitation period.

§ 951.151 *Base period.* A period of 10 days immediately preceding any period of regulation limiting the loading of grapes shall be the base period for computing the daily average quantity of Tokay grapes which any handler may ship by truck during any day of such limitation period.

§ 951.152 *Exemption*—(a) *Application for exemption.* Handlers who ship by truck, but who have made no shipments during the current season prior to the beginning of a regulation period limiting the loading of grapes may apply to the Industry Committee for a certificate authorizing shipment of grapes by truck during such a regulation period. The application must show:

(1) The name and place of business of such applicant.

(2) That such applicant is a shipper in good faith, who has shipped grapes by truck within the 3 years last past.

(3) The time of such previous shipments and the source, destination, and quantity thereof.

(4) That the grapes for which such certificate is sought have not been received from any other shipper.

(5) That the grapes for which such certificate is sought are not to be shipped on account of or as common carrier for any other shipper and that no other shipper is either directly or indirectly interested therein or will receive any benefit therefrom.

(6) Quantity of grapes for which application is made.

(b) *Granting of exemption.* An exemption shall be granted only upon it appearing to the Industry Committee that all mattters required to be stated in such application are set forth therein and are correct and that the quantity of grapes for which the exemption is sought is equitable.

Each application shall be considered separately, and in determining whether an exemption shall be granted and in determining an equitable quantity for which said exemption shall be granted, the Industry Committee, in addition to considering the information submitted in the application, shall give due recognition to the following:

(1) Whether the applicant has made any shipment of Tokay grapes by truck during the then current marketing season.

(2) The quantity of grapes which the applicant usually has shipped in each truck load and the quantity of grapes which said applicant has shipped by truck in comparable 4-day periods during each of the previous 3 seasons.

(3) The trend in volume of the applicant's truck shipments during each of the previous 3 seasons; and

(4) Whether the applicant has any bona fide orders for grapes to be shipped by truck during the limitation period.

Upon the basis of the information available, the Industry Committee shall grant or deny a certificate which will permit the applicant to ship by truck a quantity of grapes during the limitation period.

§ 951.153 *Delivery of grapes to cold storage*—(a) *Application.* Any handler who desires to deliver grapes to cold storage during a loading or packaging limitation period, for subsequent shipment by truck, may make application for a permit therefor to the Industry Committee. Such application shall be in writing and contain the following information: The name and place of business of said shipper, the grower from whom such grapes are to be received, number of packages received, or shipped to storage and number of packages for which application for storage is made, and place where such grapes are to be stored.

(b) *Issuance of storage permit.* The Industry Committee, or its authorized agent, upon receipt of application and evidence satisfactory to the committee that information submitted in said application is true and correct, shall issue a permit on the form "Storage Permit." Said permit shall be issued in triplicate; two copies to be furnished the shipper and one copy retained by the committee.

HANDLERS' REPORTS

§ 951.160 *Reports.* Each shipper of Tokay grapes shall promptly furnish and authorize and direct any railroad, transportation or cold storage company to promptly furnish without further request, to the confidential employee of the Industry Committee, complete daily information with respect to each shipment of Tokay grapes and particularly as follows:

(a) Manifests or reports covering such shipment of such grapes, including the name and adress of the shipper, number of railroad car or license number of truck, the carrier thereof, point of origin of such shipment, number of packages, sizes, grades and billing weight of such grapes and the destination, diverted destination and routing of each such shipment to an auction market;

(b) Whenever a regulation of daily shipments is in effect, such reports shall include billing date, and the time of arrival of each shipment of grapes at railroad and cold storage assembly points, and the destination or diverted destination of each shipment, sufficient in detail for the committee to determine whether such shipment is destined to a point within the State of California or off the continent of North America;

(c) In addition to all other information required to be supplied by said shipper as set forth in this section, every shipper who shall ship such grapes for which an exemption certificate is required under the provisions of § 951.51 shall promptly furnish to the confidential employee of the Industry Committee complete daily information with respect to each such shipment and more particularly as follows:

(1) The name of the grower for whom such grapes are shipped;

(2) The grade and size of such grapes; and

(3) The number of the exemption certificate under which such grapes are shipped.

§ 951.170 *Grapes for charitable purposes.* Any person who ships Tokay grapes for consumption by charitable institutions or for distribution by relief agencies, shall first deliver to the Industry Committee or its designated agent, evidence satisfactory to the committee or its designated agent that said grapes actually will be used for one or more of the aforesaid purposes.

[F. R. Doc. 51-11193; Filed, Sept. 14, 1951; 8:52 a. m.]

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[Lemon Reg. 399, Amdt. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

*Findings.* 1. Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

2. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rule making procedure (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient; and this amendment relieves restrictions on the handling of lemons grown in the State of California or in the State of Arizona.

*Order, as amended.* The provisions in paragraph (b) (1) (ii) of § 953.506 (Lemon Regulation 399, 16 F. R. 9139) are hereby amended to read as follows:

(ii) District 2: 350 carloads.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c)

Done at Washington, D. C., this 13th day of September 1951.

[SEAL] S. R. SMITH,
*Director, Fruit and Vegetable Branch, Production and Marketing Administration.*

[F. R. Doc. 51-11233; Filed, Sept. 14, 1951; 8:57 a. m.]

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[Lemon Reg. 400]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 953.507 *Lemon Regulation 400*—(a) *Findings.* (1) Pursuant to the market-

ing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 14 F. R. 3612), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of lemons, grown in the Sate of California or in the State of Arizona, are currently subject to regulation pursuant to said amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after an open meeting of the Lemon Administrative Committee on September 12, 1951; such meeting was held after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time thereof.

(b) *Order.* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., September 16, 1951, and ending at 12:01 a. m., P. s. t., September 23, 1951, is hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: 275 carloads;

(iii) District 3: Unlimited movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said amended marketing agreement and order, is hereby fixed in accordance with the prorate base schedule which is attached to Lemon Regulation No. 399 (16 F. R. 9139), and made a part hereof by this reference.

(3) As used in this section, "handled," "handler," "carloads," "prorate base," "District 1," "District 2," and "District 3", shall have the same meaning as when used in the said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 13th day of September 1951.

[SEAL] S. R. SMITH,
*Director, Fruit and Vegetable Branch, Production and Marketing Administration.*

[F. R. Doc. 51-11234; Filed, Sept. 14, 1951; 8:57 a. m.]

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[Orange Reg. 388, Amdt. 1]

PART 966—ORANGES GROWN IN CALIFORNIA OR IN ARIZONA

LIMITATION OF SHIPMENTS

*Findings.* 1. Pursuant to the provisions of Order No. 66 (7 CFR Part 966) regulating the handling of oranges grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Orange Administrative Committee, established under the said order, and upon other available information, it is hereby found that the limitation of the quantity of such oranges which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient; and this amendment relieves restrictions on the handling of oranges grown in the State of California or in the State of Arizona.

*Order, as amended.* The provisions in paragraph (b) (1) (i) (*b*) of § 966.534 (Orange Regulation 388, 16 F. R. 9140) are hereby amended to read as follows:

(i) *Valencia oranges.* * * *

(*b*) Prorate District No. 2; 1,450 carloads;

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup 608c)

Done at Washington, D. C., this 13th day of September 1951.

[SEAL] S. R. SMITH,
*Director, Fruit and Vegetable Branch, Production and Marketing Administration.*

[F. R. Doc. 51-11232; Filed, Sept. 14, 1951; 8:57 a. m.]

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[Orange Reg. 389]

PART 966—ORANGES GROWN IN CALIFORNIA OR IN ARIZONA

LIMITATION OF SHIPMENTS

§ 966.535 *Orange Regulation 389*—(a) *Findings.* (1) Pursuant to the provisions of Order No. 66, as amended, (7 CFR Part 966; 14 F. R. 3614), regulating the handling of oranges grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, (7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Orange Administrative Committee, established under the said amended order, and upon other available information, it is hereby found that the limitation of the quantity of such oranges which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, grown in the State of California or in the State of Arizona, are currently subject to regulation pursuant to said amended order; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after an open meeting of the Orange Administrative Committee on September 13, 1951, such meeting was held, after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons sub-

ject thereto which cannot be completed by the effective time thereof.

(b) *Order.* (1) Subject to the size requirements in Orange Regulation 372, as amended (7 CFR 966.518; 16 F. R. 4678, 5652), the quantity of oranges grown in the State of California or in the State of Arizona which may be handled during the period beginning 12:01 a. m., P. s. t., September 16, 1951, and ending at 12:01 a. m., P. s. t., September 23, 1951, is hereby fixed as follows:

(i) *Valencia oranges.* (*a*) Prorate District No. 1: Unlimited movement; (*b*) Prorate District No. 2: 1,300 carloads; (*c*) Prorate District No. 3: Unlimited movement; (*d*) Prorate District No. 4: Unlimited movement.

(ii) *Oranges other than Valencia oranges.* (*a*) Prorate District No. 1: No movement; (*b*) Prorate District No. 2: No movement; (*c*) Prorate District No. 3: No movement; (*d*) Prorate District No. 4: No movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said amended order, is hereby fixed in accordance with the prorate base schedule which is attached hereto and made a part hereof by this reference.

(3) As used in this section, "handled," "handler," "varieties," "carloads," and "prorate base" shall have the same meaning as when used in the said amended order; and the terms "Prorate District No. 1," "Prorate District No. 2," "Prorate District No. 3," and "Prorate District No. 4" shall each have the same meaning as given to the respective terms in § 966.107, as amended (15 F. R. 8712), of the current rules and regulations (7 CFR 966.103 et seq.), as amended (15 F. R. 8712).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 14th day of September 1951.

[SEAL] S. R. SMITH,
*Director, Fruit and Vegetable Branch, Production and Marketing Administration.*

PRORATE BASE SCHEDULE

[12:01 a. m. (P. d. s. t.) Sept. 16, 1951, to 12:01 a. m. (P. d. s. t.) Sept 23, 1951]

VALENCIA ORANGES

*Prorate District No. 2*

| Handler | Prorate base (percent) |
|---|---|
| Total | 100.0000 |
| A. F. G. Alta Loma | .0781 |
| A. F. G. Corona | .0385 |
| A. F. G. Fullerton | 1.0490 |
| A. F. G. Orange | .4204 |
| A. F. G. Riverside | .1273 |
| A. F. G. San Juan Capistrano | .5822 |
| A. F. G. Santa Paula | .4421 |
| Eadington Fruit Co., Inc | 5.2960 |
| Hazeltine Packing Co | .2658 |
| Krinard Packing Co | .1818 |
| Placentia Cooperative Orange Association | .6752 |
| Placentia Pioneer Valencia Growers Association | .7319 |
| Signal Fruit Association | .0979 |
| Azusa Citrus Association | .5558 |
| Covina Citrus Association | 1.1626 |
| Covina Orange Growers Association | .5287 |
| Damerel-Allison Association | .7056 |
| Glendora Citrus Association | .2971 |
| Glendora Mutual Orange Association | 0.3455 |
| Valencia Heights Orchard Association | .5082 |
| Gold Buckle Association | .2221 |
| La Verne Orange Association | .5215 |
| Anaheim Valencia Orange Association | 1.3362 |
| Fullerton Mutual Orange Association | 2.8865 |
| La Habra Citrus Association | 1.2422 |
| Yorba Linda Citrus Association, The | 1.1188 |
| Escondido Orange Association | 2.2850 |
| Alta Loma Heights Citrus Association | .0587 |
| Citrus Fruit Growers | .0735 |
| Etiwanda Citrus Fruit Association | .0134 |
| Old Baldy Citrus Association | .0387 |
| Rialto Heights Orange Growers | .0372 |
| Upland Citrus Association | .1572 |
| Upland Heights Orange Association | .0926 |
| Consolidated Orange Growers | 2.0919 |
| Frances Citrus Association | 1.2169 |
| Garden Grove Citrus Association | 2.0694 |
| Goldenwest Citrus Association | 1.7808 |
| Irvine Valencia Growers | 3.1236 |
| Olive Heights Citrus Association | 2.8368 |
| Santa Ana-Tustin Mutual Citrus Association | .9839 |
| Santiago Orange Growers Association | 4.6349 |
| Tustin Hills Citrus Association | 2.0294 |
| Villa Park Orchards Association | 2.3708 |
| Bradford Brothers, Inc | .8959 |
| Placentia Mutual Orange Association | 3.8462 |
| Placentia Orange Growers Association | 3.8156 |
| Yorba Orange Growers Association | 1.0019 |
| Call Ranch | .0352 |
| Corona Citrus Association | .4261 |
| Jameston Co | .1222 |
| Orange Heights Orange Association | .5763 |
| Crafton Orange Growers Association | .2236 |
| East Highlands Citrus Association | .0590 |
| Redlands Heights Groves | .1849 |
| Redlands Orangedale Association | .1607 |
| Rialto-Fontana Citrus Association | .0833 |
| Break & Son, Allen | .0450 |
| Bryn Mawr Fruit Growers Association | .1028 |
| Mission Citrus Association | .0603 |
| Redlands Cooperative Fruit Association | .1125 |
| Redlands Orange Growers Association | .0897 |
| Redlands Select Groves | .1716 |
| Rialto Orange Co | .1503 |
| Southern Citrus Association | .1135 |
| United Citrus Growers | .2258 |
| Zilen Citrus Co | .0150 |
| Arlington Heights Citrus Co | .0768 |
| Brown Estate, L. V. W | .0979 |
| Gavilan Citrus Association | .0921 |
| Highgrove Fruit Association | .0504 |
| McDermont Fruit Co | .1130 |
| Monte Vista Citrus Association | .1959 |
| National Orange Co | .0171 |
| Riverside Citrus Association | .0053 |
| Riverside Heights Orange Growers Association, The | .0295 |
| Sierra Vista Packing Association | .0291 |
| Victoria Ave. Citrus Association | .0899 |
| Claremont Citrus Association | .1126 |
| College Heights Orange & Lemon Association | .2306 |
| Indian Hill Citrus Association | .1274 |
| Pomona Fruit Growers Exch | .3218 |
| Walnut Fruit Growers Association | .5419 |
| West Ontario Citrus Association | .1847 |
| El Cajon Valley Citrus Association | .0000 |
| Escondido Cooperative Citrus Association | .0956 |
| San Dimas Orange Growers Association | 0.2444 |
| Canoga Citrus Association | .8293 |
| North Whittier Heights Citrus Association | .8896 |
| San Fernando Heights Orange Association | .7030 |
| Sierra Madre-Lamanda Citrus Association | .3262 |
| Camarillo Citrus Association | 1.3414 |
| Fillmore Citrus Association | 2.8943 |
| Mupu Citrus Association | 1.6933 |
| Ojai Orange Association | .2564 |
| Piru Citrus Association | 2.0104 |
| Rancho Sespe | .7507 |
| Santa Paula Orange Association | 1.0341 |
| Tapo Citrus Association | .8415 |
| Ventura County Citrus Association | .5396 |
| Limoneira Co | .5312 |
| East Whittier Citrus Association | .3686 |
| Murphy Ranch Co | .9495 |
| Anaheim Cooperative Orange Association | 2.2241 |
| Bryn Mawr Mutual Orange Association | .1387 |
| Chula Vista Mutual Lemon Association | .0000 |
| Euclid Ave. Orange Association | .5426 |
| Foothill Citrus Union, Inc | .0635 |
| Fullerton Cooperative Orange Association | .4142 |
| Garden Grove Orange Cooperative, Inc | 1.3826 |
| Golden Orange Groves, Inc | .1776 |
| Highland Mutual Groves | .0089 |
| Index Mutual Association | .4504 |
| La Verne Cooperative Citrus Association | 1.4576 |
| Olive Hillside Groves, Inc | .7742 |
| Orange Cooperative Citrus Association | 1.8247 |
| Redlands Foothill Groves | .3650 |
| Redlands Mutual Orange Association | .1516 |
| Ventura County Orange and Lemon Association | 1.1969 |
| Whittier Mutual Orange and Lemon Association | .1403 |
| Babijuice Corp. of California | .8426 |
| Banks, L. M | .6615 |
| Becker, Samuel Eugene | .0092 |
| Bennett Fruit Co | .1014 |
| Borden Fruit Co | .6947 |
| Cappos Bros. Produce | .0072 |
| Cherokee Citrus Co., Inc | .1068 |
| Chess Co., Meyer W | .3753 |
| Dozier, Paul M | .0125 |
| Dunning Ranch | .0000 |
| Evans Bros. Packing Co | .6323 |
| Gold Banner Association | .1542 |
| Granada Hills Packing Co | .0326 |
| Granada Packing House | .9592 |
| Hill Packing Co., Fred A | .0492 |
| Knapp Packing Co., John C | .6199 |
| L Bar S Ranch | .0047 |
| Lawson, William J | .0000 |
| Lima & Sons, Joe | .1382 |
| Orange Belt Fruit Distributors | 1.5257 |
| Orange Hill Groves | .0090 |
| Otte, Arnold | .0587 |
| Panno Fruit Co., Carlo | .6153 |
| Paramount Citrus Association | .6058 |
| Patitucci, Frank L | .0090 |
| Placentia Orchard Co | .6600 |
| Prescott, John A | .0189 |
| Redlands Fruit Association, Inc | .0146 |
| Ronald, P. W | .0208 |
| San Antonio Orchard Co | .2706 |
| Stephens, T. F | .2452 |
| Summit Citrus Packers | .0171 |
| Treesweet Products Co | .1025 |
| Wall, E. T., Grower-Shipper | .1201 |
| Western Fruit Growers, Inc | .3481 |

[F. R. Doc. 51-11252; Filed, Sept. 14, 1951; 11:13 a. m.]

## PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

### AMENDED ADMINISTRATIVE RULES AND PROCEDURES

Pursuant to the applicable provisions of the marketing agreement, as amended, and order, as amended, (16 F. R. 8437) regulating the handling of dried prunes produced in California (hereinafter referred to as the "order"), effective under the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), the Prune Administrative Committee (the administrative agency for operations under the order) has submitted, for the approval of the Secretary of Agriculture, amended administrative rules and procedures governing its operations, which are set forth hereinafter. After consideration of all pertinent available information, it is concluded that such amended administrative rules and procedures should be approved.

*Therefore, it is hereby ordered,* That the administrative rules and procedures approved by the Secretary of Agriculture on October 26, 1949, effective November 4, 1949 (14 F. R. 6625) be amended to read as hereinafter set forth.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of these amended administrative rules and procedures more than three days after publication in the FEDERAL REGISTER (see section 4 of the Administrative Procedure Act; 5 U. S. C. 1001 et seq.) in that: (1) the marketing of the current crop of prunes has already begun, and these amended administrative rules and procedures are needed promptly for use in connection with regulations under this part; (2) handlers generally are familiar with the contents of these administrative rules and procedures, their representatives on the committee having participated in their formulation; and (3) the circumstances are such that handlers do not need more than three days' advance notice to prepare for the application of the provisions set forth in said amended administrative rules and procedures.

The amended administrative rules and procedures are as follows:

DEFINITIONS

Sec.



No. 180——4

AUTHORITY: §§ 993.101 to 993.175 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c.

SOURCE: Original administrative rules and precedures appear at 14 F. R. 6625.

### DEFINITIONS

§ 993.101 *Order.* "Order" means Marketing Agreement No. 110, as amended, and Marketing Order 93, as amended, (16 F. R. 8437) regulating the handling of dried prunes produced in California, or as they may be further amended hereafter.

§ 993.102 *Committee.* "Committee" means the Prune Administrative Committee established pursuant to § 993.24.

§ 993.103 *Terms in the order.* Terms defined in the order shall have the meaning of such definitions when used in this subpart.

### GRADE AND SIZE REGULATIONS

§ 993.148 *Receiving of prunes by handlers*—(a) *Inspection stations.* An inspection station shall be any plant of a handler, and any other place where prunes are normally and usually received in any considerable volume, and at which there are reasonably adequate facilities for receiving, weighing, and sampling prunes.

(b) *Incoming inspection*—(1) *General.* Prunes must be inspected at an inspection station when they are tendered to a handler, and in order to be received as standard prunes, must be certified as standard prunes. At that time, the handler shall provide the inspector with any assistance necessary in drawing samples. When necessary to perform proper inspection, the inspector may require the handler to dump containers to permit proper sampling. Certification of any lot of prunes shall be made and computed on the basis of the net weight of prunes received in such lot, and the handler shall supply such information to the inspector. For each tender of prunes made to a handler by a producer or dehydrator, the handler shall, immediately upon acceptance thereof, issue to the producer or dehydrator a door receipt or weight certificate showing the name and address of the deliverer, the weight of the lot, and any other information necessary to identify the lot. An inspection certificate shall be limited to prunes covered by a single door receipt or weight certificate. Prunes tendered to a handler by a producer or dehydrator in ton boxes, for which a door receipt or weight certificate is issued, but which cannot be dumped for sampling at the time of the tender, because of inadequate handling equipment, may be held for later inspection: *Provided,* That each such ton box of prunes so held is identified with its corresponding door receipt or weight certificate by the handler to the satisfaction of the inspector and that at the time inspection is performed the tonnage of each door receipt or weight certificate shall be inspected and certificated separately. When prunes are inspected at other than a handler's plant, the inspector shall forward with such lot to the handler, the handler's copies of the certificate.

(2) *Certification.* Following inspection, the inspector shall issue, in quintuplicate, a signed certificate containing the following information: (i) The date and place of inspection; (ii) the names and addresses of the producer or dehydrator, the handler, and the inspection agency; (iii) the variety of the prunes, the county in which such prunes were produced, the number and type of the containers thereof, and the net weight of the prunes as shown on the door receipt or weight certificate, together with the number of such receipt or certificate; (iv) whether the prunes are standard, substandard to be held for the account of the committee, or substandard accepted on an appraisal basis; (v) the inspector's computations of the percentage of each group or combination of groups of defects for which a maximum tolerance has been established under the order, and which is then in effect; and (vi) if tendered as substandard to be held for the account of the committee, the average size count of the prunes in the tender, or, if accepted on an appraisal basis, the percentage of off-grade prunes of each group or combination of groups of defects necessary to be removed therefrom for the remainder to be standard prunes, and the size count of the off-grade prunes in the tender.

(c) *Conditional provisions*—(1) *Wet or slack-dry prunes.* Any prunes tendered to a handler by a producer or dehydrator which an inspector determines have not been properly dried and cured in original natural condition, or which show evidence of the addition thereto of water, may be accepted by the handler for the account of the producer or dehydrator for conditioning by further drying or dehydration: *Provided,* That such tender of prunes shall be identified and kept separate and apart from any other prunes in the handler's possession until resubmitted for inspection and certificated, or returned to the producer or dehydrator. At the time of the original determination by the inspector, he shall assign to such tender of wet or slack-dry prunes an inspection certificate number, and he shall make record of the following information: (i) The place and date on which the wet or slack-dry prunes were tendered; (ii) the names and addresses of the producer or dehydrator and handler; and (iii) the variety of the prunes, the county in which such prunes were produced, the number and type of containers thereof, and the net weight of the prunes as shown on the door receipt or weight certificate, together with the number of such receipt or certificate. Following conditioning of such wet or slack-dry prunes by the handler to the satisfaction of the inspector, the inspector shall, unless the prunes are to be returned to the producer or dehydrator, complete the inspection thereof and issue the certificate assigned to such tender in accordance with his findings, indicating the net weight after conditioning and indicating thereon that such tender was inspected following proper conditioning thereof by the handler and showing the date inspection was completed.

(2) *Prunes with active insect infestation.* Any prunes tendered to a handler

by a producer or dehydrator, which an inspector determines are not free from active insect infestation, may be accepted by the handler for the account of the producer or dehydrator for conditioning by fumigation: *Provided,* That such tender of prunes shall be identified and kept separate and apart from any other prunes in the handler's possession until resubmitted for inspection and certificated, or returned to the producer or dehydrator. At the time of such original determination by the inspector, he shall assign to such tender of infested prunes an inspection certificate number, and he shall make record of the following information: (i) The place and date of the tender of such infested prunes, (ii) the names and addresses of the producer or dehydrator and the handler; and (iii) the variety of the prunes, the county in which such prunes were produced, the number and type of containers thereof, and the net weight of the prunes as shown on the door receipt or weight certificate, together with the number of such receipt or certificate. Following fumigation of such infested prunes to the satisfaction of the inspector, the inspector shall, unless the prunes are to be returned to the producer or dehydrator, complete the inspection thereof and issue the certificate assigned to such tender in accordance with his findings, indicating thereon that such tender was inspected following fumigation thereof by the handler and showing the date inspection was completed.

(3) *High moisture content prunes.* The receipt of any high moisture content prunes accepted by a handler from a producer or dehydrator shall be reported promptly by the handler to the inspection agency. The inspection agency shall submit a report to the committee of each such tender which shall contain the following information: (i) The date and place of the tender; (ii) the names and addresses of the producer or dehydrator, the handler, and the inspection agency; and (iii) the variety of the high moisture content prunes, the county in which they were produced, and the net weight of the tender as shown on the door receipt or weight certificate, together with the number of such receipt or certificate. Any handler who, subsequent to acceptance by him of a tender of high moisture content prunes, elects to dry or dehydrate such tender or any portion thereof shall, prior to proceeding with such drying or dehydration, notify an inspector of the inspection agency of his intent, and the same procedure shall apply as the procedure set forth in subparagraph (1) of this paragraph as it relates to the conditioning of wet or slack-dry prunes by a handler. For each day on which a handler processes and packages high moisture content prunes, he shall furnish promptly to the inspector a signed statement, showing the name and address of the handler and the net weight of the total tonnage of high moisture content prunes processed and packaged by him on that day. The handler shall furnish promptly to the inspector a copy of the shipping or disposition order or other documents which shall show the date of each shipment or disposition, the applicable reference number thereof, and an adequate description of the shipment or disposition. The inspector shall forward to the committee one copy of each document so furnished pursuant to the requirements of the two preceding sentences. Upon request of the committee a handler shall, within ten days thereafter, file with the committee a signed report on Form PAC 3.1 "Report of High Moisture Content Prunes" which shall contain the following information: (i) The date and the name and address of the handler; (ii) the total tonnage of high moisture content prunes acquired by the handler during the crop year to the date of the report; (iii) the total tonnage of high moisture content prunes shipped or otherwise disposed of by the handler during such period; (iv) the total tonnage of high moisture content prunes acquired by the handler during such period which were dried or dehydrated subsequent to acquisition; and (v) the total tonnage of high moisture content prunes in the handler's possession, unshipped or not otherwise disposed of at the date of the report.

(d) *Substandard prunes received on an equivalent quantity basis.* The weighted average size count of substandard prunes held for the account of the committee by a handler on the equivalent quantity basis prescribed in § 993.48 (e) (2) shall not exceed by more than 20 prunes per pound when delivered to the committee the weighted average size count of the off-grade prunes in appraisal lots as shown on certificates of appraisal issued to the handler for that crop year.

§ 993.149 *Disposition of prunes by handlers*—(a) *Inspection stations.* An inspection station shall be any plant of a handler, and any other place where he handles prunes.

(b) *Outgoing inspection.* Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of natural condition prunes or of processed prunes unless he has, prior to such shipment or final disposition, had them inspected and obtained a certificate showing that such prunes meet the prescribed applicable minimum standards. Such inspection shall be made during that portion of the final preparation of the prunes for shipment or other final disposition as will afford proper sampling, and no handler shall perform such final preparation unless an inspector is present. The handler shall furnish promptly to the inspector a copy of the shipping or disposition order or other documents, which shall show the date of each shipment or disposition, the applicable reference number thereof, and an adequate description of the shipment or disposition. For the prunes inspected by him each day which meet the applicable minimum grade and size requirements for standard prunes, or standard processed prunes, the inspector shall issue in triplicate a signed certificate containing the following information: (1) The date and place of inspection; (2) the name and address of the handler and of the inspection agency; (3) the number and size of packages or the net weight of prunes; (4) the number of the worksheet or worksheets on which the inspector's computations and results of tests are recorded; and (5) a statement that the prunes meet the prescribed applicable minimum standards for standard prunes, or standard processed prunes, as the case may be.

(c) *Inter-handler transfers.* A handler who transfers prunes of his salable tonnage to a plant of another handler within the State of California without inspection shall submit to the committee, not later than five days (exclusive of Saturdays, Sundays, and legal holidays) following such transfer, a signed report on Form PAC 1.1, "Inter-handler Transfer Report," containing the following information: (1) The date of the transfer; (2) the names and addresses of the handlers and the locations of the plants; (3) the number of packages and the net weight of prunes; (4) the condition of the prunes (natural or processed); and (5) the manifest or billing number. Two copies of such report shall be forwarded to the receiving handler, on one of which the receiving handler shall certify to the receipt by him of such prunes, and submit it to the committee within five days (exclusive of Saturdays, Sundays, and legal holidays) following receipt of the prunes. Any handler who reports a transfer of prunes of his salable tonnage to a plant of another handler which have been inspected prior to transfer, shall show on such inter-handler transfer report the applicable inspection certificate number and the name of the handler to whom such certificate was issued. The receiving handler shall indicate on the copy of such inter-handler transfer report which he submits to the committee whether he proposes to have such prunes reinspected prior to shipment thereof by him, and if so, he shall so notify the transferring handler in writing, copy of such notice to be forwarded to the committee. In case such transferring handler has outgoing inspection made of such prunes prior to the transfer, the receiving handler shall not be required to have further outgoing inspection made at the time he disposes of them if such outgoing inspection was made a reasonable time prior to disposition by the receiving handler. The handler in whose name the final outgoing inspection certificate is issued on such prunes shall report to the committee the sale and shipment thereof on Forms PAC 12.1 and PAC 13.1, respectively.

(d) *Prunes which fail to meet the quality standards for disposition*—(1) *Committee's approval of disposition.* Any defective prunes which may be accumulated by a handler by removing them from standard prunes or any prunes received by a handler for his own account which fail to meet the quality standards for the disposition of prunes, must, pursuant to § 993.49 (e) (2), be used or marketed as animal feed, pitted prunes, or as prune products only. In order to insure that such prunes will not be used for any purpose other than as animal feed, pitted prunes, or as prune products, any handler, prior to making any shipment or other disposition of such prunes, shall file a written application with the committee for permission to do so and receive the written approval of

the committee thereto on Form PAC 2.3 "Permission to Dispose of Substandard Prunes." Every such application shall set forth, if for shipment, the name and address of the consignee, the quantity of prunes to be shipped and their then present location, the disposition proposed to be made of them and, if such disposition is to be by someone other than the buyer, the name and address of such other person. If disposition is to be made by the handler, the application shall set forth similar information insofar as it is applicable. In addition, the handler shall make available for examination by the committee, at his business office at any time during business hours, copies of all applicable purchase orders, sales contracts, or disposition orders, together with any further information which the committee may deem necessary or desirable to enable it to determine whether such prunes have been or will be actually utilized for a permitted purpose. The committee, in acting on the applications, shall specify the maximum quantity of substandard prunes, if any, for which approval is granted. In the event the committee has cause to believe that such prunes will not be shipped or disposed of in accordance with a handler's application or has cause to believe that the prunes will not be utilized for a permitted purpose, the committee shall disapprove the handler's application and shall notify him of such disapproval and that he shall not make the proposed shipment or disposition.

(2) *Reports covering disposition of substandard prunes.* Upon request of the committee, a handler shall file with the committee within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter, a certified report covering such period as it may specify, on Form PAC 2.1, "Report of Disposition of Substandard Prunes," containing the following information: (i) Date, the name and address of the handler and the period covered by the report, (ii) an itemized accounting, by buyers, of the tonnages of such substandard prunes either shipped or disposed of during the period of the report; (iii) names and addresses of persons, other than buyers, making final disposition of such substandard prunes during the period of the report.

(3) *Packaging and marking substandard prunes shipped for manufacturing purposes.* Any of such substandard prunes as may be shipped out of California for manufacturing purposes shall be packed in sealed containers on each of which there has been marked on one side, or one end, in letters not less than three-fourths of an inch in height the words, "For Manufacturing Purposes Only."

(4) *Inspection of substandard prunes.* All of such prunes, wherever shipped or disposed of and however packed, shall be inspected by an inspector (prior to disposition or shipment by a handler), who shall issue, in triplicate, a signed clearance certificate (for the preparation of which the handler shall make available to the inspector the necessary data) containing the following information: (i) The date and place of inspection and clearance; (ii) the name and address of the inspection agency and of the handler; (iii) the number and kind of packages, the net weight, and the adequacy of the marking; (iv) the lot number or shipping or disposition order number; (v) the committee's approval number; (vi) the destination; and (vii) the actual percentage of off-grade prunes of each group, or combination of groups, of defects in excess of the then current tolerances for standard prunes or standard processed prunes.

§ 993.150 *Receiving and disposition of prunes by handlers during any crop year when the estimated seasonal average price is in excess of parity*—(a) *Receiving.* During any crop year for which regulation pursuant to § 993.50 is made effective, the procedures for the receiving of prunes by handlers as set forth in § 993.148 (a), (b) and (c) shall apply insofar as they are consistent with the applicable order provisions: *Provided,* That the certificate of inspection specified in paragraph (b) of § 993.148 shall contain the following information instead of that prescribed in subparagraph (2) thereof: (1) The date and place of inspection; (2) the names and addresses of the producer or dehydrator, the handler, and the inspection agency; (3) the variety of the prunes, the county in which such prunes were produced, the number and type of containers thereof, and the net weight of the prunes as shown on the door receipt or weight certificate, together with the number of such receipt or certificate; (4) whether the prunes contain defects in excess of the applicable maximum tolerances specified in § 993.97; (5) the inspector's computation of the percentage of each group or combination of groups of defects for which a maximum tolerance is specified in said § 993.97; and (6) if there are off-grade prunes in excess of the maximum tolerances specified in said § 993.97, the percentage of off-grade prunes of each group or combination of groups of defects necessary to be removed from the lot in order for the remainder to be within the maximum tolerance specified in said § 993.97; and (7) that the prunes meet the requirements of paragraph (d) of subdivision (i) of said § 993.97.

(b) *Disposition*—(1) *Applicable provisions.* During any crop year for which regulation pursuant to § 993.50 is made effective, the procedures for the disposition of prunes by handlers as set forth in § 993.149 shall apply: *Provided,* That prunes which fail to meet the quality standards set forth in § 993.97, for natural condition prunes or processed prunes, as the case may be, shall, in lieu of the requirements set forth in the provisions of paragraph (d) of said § 993.149, be disposed of in accordance with the provisions of subparagraphs (2), (3), (4), and (5) of this paragraph.

(2) *Committee's approval of disposition.* Any handler prior to making any shipment or other disposition of prunes which fail to meet the applicable minimum quality standards set forth in § 993.97 for natural condition prunes or processed prunes shall file a written application with the committee for permission to do so and receive the written approval of the committee thereto on Form PAC 2.4, "Permission to Dispose of Off-grade Prunes". Every such application shall set forth, if for shipment, the name and address of the consignee, the quantity of prunes to be shipped and their then present location, the disposition proposed to be made of them and, if such disposition is to be by someone other than the buyer, the name and address of such other person. If disposition is to be made by the handler, the application shall set forth similar information insofar as it is applicable. In addition, the handler shall make available for examination by the committee, at his business office at any time during business hours, copies of all applicable purchase orders, sales contracts, or disposition orders, together with any further information which the committee may deem necessary or desirable to enable it to determine whether such prunes have been or will be actually utilized for a permitted purpose. The committee in acting on the applications shall specify the maximum quantity of off-grade prunes, if any, for which approval is granted. In the event the committee has cause to believe that such prunes will not be shipped or disposed of in accordance with a handler's application or has cause to believe that the prunes will not be utilized for a permitted purpose, the committee shall disapprove the handler's application and shall notify him of such disapproval and that he shall not make the proposed shipment or disposition.

(3) *Reports covering disposition of off-grade prunes.* Upon request of the committee, a handler shall file with the committee within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter, a certified report covering such period as it may specify, on Form PAC 2.5, "Report of Disposition of Off-grade Prunes," containing the following information: (i) Date, the name and address of the handler and the period covered by the report; (ii) an itemized accounting, by buyers, of the tonnages of such prunes either shipped or disposed of during the period of the report; (iii) names and addresses of persons, other than buyers, making final disposition of such off-grade prunes during the period of the report.

(4) *Packaging and marking off-grade prunes shipped for manufacturing purposes.* Any of such prunes as may be shipped out of California for manufacturing purposes shall be packed in sealed containers on each of which there has been marked on one side, or one end, in letters not less than three-fourths of an inch in height the words, "For Manufacturing Purposes Only."

(5) *Inspection of off-grade prunes.* All of such prunes, wherever shiped or disposed of and however packed, shall be inspected by an inspector, prior to disposition or shipment, who shall issue, in triplicate, a signed clearance certificate (for the preparation of which the handler shall make available to the inspector the necessary data) containing the following information: (i) The date and place of inspection and clearance; (ii) the name and address of the inspection agency and of the handler; (iii) the number and kind of packages, net weight, and the adequacy of the marking; (iv) the lot number or shipping or disposition

order number; (v) the committee's approval number; (vi) the destination; and (vii) the actual percentage of off-grade prunes of each group or combination of groups of defects in excess of the applicable maximum tolerances specified in § 993.97 of the order.

(c) *Reports of accounting*—(1) *Independent handler's reports of accounting.* Within 10 days (exclusive of Saturdays, Sundays, and legal holidays) after a handler, other than a nonprofit cooperative agricultral marketing association, makes a size report, accounting, or settlement with a producer or dehydrator for prunes delivered to him, he shall submit to the committee a copy of the size report, and the accounting or settlement record, which shall contain the following information: (i) The names and addresses of the producer or dehydrator and the handler, and the date of the size report, accounting, or settlement; (ii) the contract number, if any; (iii) an itemized statement of the total tenders of prunes in the delivery, showing the date, receiving point, weight certificate or door receipt number, inspection certificate number, net weight, variety, crop year of production, and the total net weight of the delivery.

(2) *Cooperative marketing association's reports of accounting.* Upon written notice by the committee, non-profit cooperative agricultural marketing associations which are handlers shall file with the committee within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter, a signed cumulative report of the prunes received from its members and any other producers or dehydrators for whom it performs handling services, which shall contain the following information: (i) The name and address of the association and the date of the report; and (ii) the total net weight of the deliveries, itemized by crop years of production.

(d) *Effective provisions.* During any crop year for which regulation pursuant to § 993.50 is made effective, the provisions of § 993.148 to the extent specified in paragraph (a) of this section, § 993.149 to the extent specified in paragraph (b) of this section, and all other provisions of this subpart except § 993.161 shall remain in full force and effect, except to the extent that they may be in conflict with the provisions of this section, the order, or the act.

SALABLE AND SURPLUS TONNAGE REGULATIONS

§ 993.161 *Surplus tonnage*—(a) *Reports*—(1) *Monthly reports on substandard prunes held separate from other prunes which are to be delivered to the committee.* Each handler shall submit to the committee a certified report on Form PAC 4.1, "Substandard Prunes Held Separate From Other Prunes by Handler for Delivery to the Prune Administrative Committee" containing the following information as of the last day of each month, each such report for each month to be submitted not later than the 10th calendar day of the following month: (i) The date and name and address of the handler; (ii) the effective date of the report; and (iii) the tonnages of substandard prunes physically held separately from other prunes by the handler, ready for delivery to the committee as of that date, itemized by plants, together with the locations of the plants.

(2) *Monthly cumulative reports on all surplus tonnage, standard and substandard.* Each handler shall submit to the committee for each month, a certified report on Form PAC 5.1, "Handler's Cumulative Report of Surplus Tonnage," containing the following information, as of the last day of the month, in respect to prunes received, held, processed, disposed of, or shipped by him during the crop year and submit the report for each month on or before the 10th calendar day of the following month: (i) The date and the period of report; (ii) the name and address of the handler; (iii) the total cumulative net weight of surplus tonnage received during the crop year through the month, segregated as to standard prunes and substandard prunes, and the total cumulative net weight of surplus prunes, segregated as to standard prunes and substandard prunes, removed from his premises, during the crop year through the month; (iv) the net weight of surplus standard prunes physically held by the handler, by sizes, if graded; and (v) the net weight of surplus substandard prunes physically held by the handler.

(3) *Independent handler's reports of accounting.* Within 10 days (exclusive of Saturdays, Sundays and legal holidays) after a handler, other than a nonprofit cooperative agricultural marketing association, makes a size report, accounting, or settlement with a producer or dehydrator for prunes delivered to him, he shall submit to the commitee a copy of the size report and the accounting or settlement record, which shall contain the following information: (i) The names and addresses of the producer or dehydrator and the handler, and the date of the size report, accounting or settlement; (ii) the contract number, if any; (iii) an itemized statement of the total tenders of prunes in the delivery, showing the date, receiving point, weight certificate, or door receipt number, inspection certificate number, net weight, variety, the crop year of production, and type of certification, and, if substandard, the average size count of a representative sample of the off-grade prunes in the tender, and, if received on appraisal, the tonnage of prunes equivalent to the quantity of off-grade prunes necessary to be removed therefrom for the remainder to be standard prunes; and (iv) the total net weight of the delivery, itemized as to salable, surplus standard, and surplus substandard prunes, and the net weight by sizes, of the surplus standard prunes.

(4) *Cooperative marketing association's reports of accounting.* Upon written notice by the committee, nonprofit cooperative agricultural marketing associations who are handlers shall file with the committee within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter a signed cumulative report of the prunes received from its members and any other producers for whom it performs handling services, which shall contain the following information: (i) The name and address of the association, and the date of the report; and (ii) the total net weight of the deliveries, itemized by crop years of production as to salable, surplus standard, and surplus substandard prunes, and the net weight and tentative sizes of the surplus standard prunes.

(b) *Holding in proper storage and delivery of surplus tonnage.*—(1) *Provision in the event of failure to deliver in accordance with obligation.* In the event a handler fails to deliver to the committee the total surplus tonnage of any established grade or size group category in accordance with his obligation to so deliver, after any applicable tolerance allowances for shrinkage in weight, increase in the number of prunes per pound, and normal and natural deterioration and spoilage which may then be in effect have been applied, the handler shall make up any deficiency by delivering to the committee a quantity of prunes of his salable tonnage of the weight, grade, and size necessary to rectify such deficiency. To the extent that a handler is unable to rectify such a deficiency with prunes of his salable tonnage he shall compensate the committee in the amount of the reduction of surplus tonnage revenue that is occasioned by his unfulfilled surplus tonnage obligation, such amount to be calculated on the basis of the average price received by the committee during the crop year for surplus tonnage prunes of the applicable grade or size category and of the specific grade and size involved plus costs to the committee caused by the handler's failure to meet his obligation: *Provided,* That the remedies herein provided shall be in addition to and not exclusive of any of the remedies or penalties prescribed in the act with respect to the failure on the part of the handler to comply with the applicable provisions of the act or any part or subpart thereof.

(2) *Provision in the event of delivery in excess of obligation.* In the event a handler delivers to the committee in any crop year surplus tonnage of any grade or size group category, as established by the committee, in excess of the total surplus tonnage of such category which he is obligated to deliver, the committee shall return such excess tonnage of prunes, if practicable, to the handler, or if impracticable, the committee shall compensate the handler for the value of such excess delivery, which value shall be determined by the committee as the average net sales proceeds paid by the committee to all persons who contributed to the surplus tonnage during the crop year for prunes of like size and grade, plus the applicable payment for services prescribed in the provisions of § 993.201 (15 F. R. 1888), or as the said provisions may be amended hereafter.

(c) *Exchange of salable tonnage prunes for surplus tonnage prunes.* Any handler who desires to exchange standard prunes of his salable tonnage for standard prunes of the surplus tonnage held by him for the committee or held in the possession of the committee, shall file with the committee a certified application on Form PAC 7.1, "Application for Exchange of Salable Tonnage for Surplus Tonnage," containing the following information: (1) The date and the name and address of the handler;

(2) the quantity of prunes for exchange; (3) the sizes and grade of the required quantity of prunes in the surplus tonnage, by weight of each size and grade, and the district of origin; and (4) the sizes, grade, and crop year of production of the quantity of prunes in the salable tonnage for exchange, by weight of each size and grade, and the district of origin. The handler shall make no such exchange until he shall have received the written approval of the committee, and the committee shall give him prompt notice in writing of its decision on his application.

(d) *Deferment of meeting surplus obligation.* Any handler who desires to defer the meeting of his surplus obligations in accordance with the provisions set forth in § 993.61 (g) shall make application to the committee on Form PAC 9.1. "Application for Deferment of Surplus Obligation," containing the following information: (1) The date and the name and address of the handler; (2) the total salable tonnage acquired or under contract with producers and dehydrators; (3) the period for which deferment is requested; (4) the total surplus tonnage on which deferment is requested; and (5) the type of surety bond offered. The committee shall notify the applicant promptly of its decision with regard to his application, including the amount of the bond required, if his application is approved. No handler shall use or dispose of surplus tonnage prunes until he shall have received approval of his application by the committee, and shall have filed the required bond with the committee.

(e) *Diversion privileges.* Any producer who desires to divert prunes in accordance with the provisions of § 993.62 shall make application to the committee for permission to avail himself of such privilege on Form PAC 10.1, "Application for Green Division of Prunes," containing the following information: (1) The date and the name and address of the applicant; (2) the exact location of the orchard or orchards or the name and location of the dehydrator at which the diversion is to take place; (3) the total bearing acreage of prunes operated by the applicant; (4) the applicant's estimate of his then current crop of prunes in equivalent dried tons; (5) the applicant's estimate of the dried tonnage equivalent of the quantity proposed for green diversion; (6) the proposed method of diversion, if harvested, indicating whether the prunes are to be fed to livestock or otherwise destroyed; (7) the proposed method of diversion, if unharvested, indicating whether the prunes are to be diverted by disking, pasturing, or irrigating the orchard; (8) the period during which diversion will take place, and the estimated date on which proof thereof can be supplied; (9) the name and address of the handler to whom the salable tonnage covered by the diversion certificate, together with such certificate, will be delivered, if known; and (10) the name and address of the producer or other person to whom the diversion certificate will be transferred, if known. Each such application submitted to the committee shall be accompanied by a deposit of $25.00 to apply against the costs of appraisal and supervision. The charge for any diversion certificate so issued shall be based on actual costs: *Provided*, That the charge for the issuance of any such certificate shall not exceed $3.00 per ton, or fractional part of a ton in excess of one-half ton, on a dried weight basis, of prunes diverted, but there shall be a minimum charge of $25.00 in the event the amount to be charged on such basis would be less than $25.00. In the event an application is rejected without an appraisal being made, the committee shall remit the full amount of the applicant's deposit. If an application is rejected or withdrawn after an appraisal is made, the committee shall remit to the applicant that portion of the deposit which is over and above the actual cost of the appraisal. The committee shall notify the applicant promptly of its decision, and, upon submission of proof of diversion satisfactory to the committee, it shall issue a diversion certificate.

(f) *Basis for the distribution of the net proceeds of the surplus pool.* It is provided in § 993.63 (i) (2) that the net proceeds from the disposition of surplus tonnage of prunes shall be distributed by the committee, either directly or through handlers as agents of the committee, under safeguards to be established by the committee, to persons in proportion to the contributions thereto, or to assignees of such interests, with appropriate grade and size differentials as established by the committee. Such grade and size differentials shall be fixed by the committee on the basis of the relative value, as determined by the committee, of the respective grades and sizes of the surplus tonnage, and each person entitled to share in the net proceeds shall be paid proportionately in accordance with such differentials as applied against the particular grades and sizes in the surplus prunes contributed on his behalf to the pool. In case the committee should determine that such payments be made through a handler, other than a nonprofit cooperative agricultural marketing association, such handler shall determine the amount of each individual payment due in connection with prunes delivered to him on the basis outlined above, using the information necessary to make such computation as furnished him by the committee, and draw a draft on the committee for the amount found to be due in favor of the person entitled to the payment. Upon receipt by the committee of such a draft, it shall check it for accuracy and honor it if it is found to be the correct amount payable to such person.

REPORTS AND BOOKS AND OTHER RECORDS

§ 993.172 *Reports of acquisition, sales, uses, and shipments*—(a) *Acquisitions and prices paid therefor.* Upon request of the committee, a handler shall file with the committee, within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter, a certified report covering such period as it may specify on Form PAC 11.1, "Report of Acquisition and Weighted Average Prices Paid to Producers and Dehydrators", containing the following information: (1) The date, the name and address of the handler, and the period covered by the report; (2) the total tonnage of prunes acquired and contracted to be acquired at a stipulated price from producers and dehydrators during the crop year to a date specified by the committee; and (3) the weighted average basis prices paid or to be paid, to producers and dehydrators for each size, and the quantity purchased at each such price.

(b) *Sales by handlers.* Handlers shall file each month with the committee, within 10 days (exclusive of Saturdays, Sundays, and legal holidays) of the first day of each month, a signed report on Form PAC 12.1, "Report of Sales", containing the following information: (1) The date, the name and address of the handler, and the period covered by the report; (2) the total tonnage of prunes sold by the handler unshipped at the beginning of the crop year plus sales during the crop year to the last day of the month reported upon; (3) the total tonnages sold in domestic markets, by uses; (4) the total tonnages sold in export markets, segregated as to countries; and (5) the total tonnages sold to Federal Government agencies.

(c) *Shipments by handlers.* Each handler shall file with the committee, for each month, prior to the 10th calendar day of the next succeeding month, a signed report on Form PAC 13.1, "Report of Shipments", containing the following information: (1) The date, the name and address of the handler, and the period covered by the report; and (2) the total tonnage of prunes shipped or otherwise disposed of by the handler during the period of the report, segregated as to commercial domestic outlets, commercial foreign export outlets, Commodity Credit Corporation purchases, other Federal Government agency purchases, and culls.

§ 993.175 *Other reports*—(a) *Carryover and marketing policy information.* Upon request of the committee, a handler shall, within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter, file with the committee a signed report on Form PAC 14.1, "Report of Carryover and Marketing Policy Information", containing such of the following items of information as may be requested by the committee: (1) The tonnage of prunes held by the handler, separately stated as surplus or salable tonnage, by size and grade, as of the date specified in the committee's request; and (2) the handler's estimate of the tonnage of prunes held by producers and dehydrators from whom the handler acquired prunes during the current or preceding crop year, of the tonnage and quality and size of prunes expected to be produced by such producers and dehydrators during the current or following crop year, of current prices being received by producers, dehydrators, and handlers, and of probable market requirements.

Issued at Washington, D. C., this 12th day of September 1951, to be, and become, effective on the third day after publication hereof in the FEDERAL REGISTER.

[SEAL] CHARLES F. BRANNAN,
*Secretary of Agriculture.*

[F. R. Doc. 51-11194; Filed, Sept. 14, 1951; 8:52 a. m.]

# TITLE 49—TRANSPORTATION

## Chapter I—Interstate Commerce Commission

[Order 2, Docket No. 3666]

### PARTS 71–78—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

### MISCELLANEOUS AMENDMENTS

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 15th day of August 1951.

It appearing, that pursuant to the Transportation of Explosives Act of March 4, 1921 (41 Stat. 1444), sections 831–835 of Title 18 of the United States Code approved June 25, 1948, and Part II of the Interstate Commerce Act, as amended, the Commission has heretofore formulated and published certain regulations for the transportation of explosives and other dangerous articles.

It further appearing, that in application received we are asked to amend the aforesaid regulations as set forth in provisions made a part thereof.

*It is ordered*, That the aforesaid regulations for the transportation of explosives and other dangerous articles be, and they are hereby, amended as follows:

### PART 72—COMMODITY LIST OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 71–78 OF THIS CHAPTER

Amend § 72.5, Commodity list (15 F. R. 8263, Dec. 2, 1950; 16 F. R. 5322, June 6, 1951; 49 CFR 72.5, Rev. 1950) as follows:

§ 72.5 *List of explosives and other dangerous articles.* (a) * * *

| Article | Classed as— | Exemption and packing (see sec.) | Label required if not exempt | Maximum quantity in 1 outside container by rail express |
|---|---|---|---|---|
| *Change* | | | | |
| Bromacetone, liquid | Pois. A | No exemption, 73.329 (a). | Poison Gas | Not accepted. |
| Chlorpicrin, liquid | Pois. B | No exemption, 73.357 | Poison | 24 pounds. |
| Chlorpicrin, absorbed | do | do | do | 75 pounds. |
| Chlorpicrin, mixtures (containing no compressed gas or poisonous liquid, class A). | do | do | do | Do. |
| Chlorpicrin and methyl chloride mixtures | Pois. A | No exemption, 73.329 (b). | Poison Gas | Not accepted. |
| *Add* | | | | |
| Ethylene imine, inhibited | F. L. | No exemption, 73.139 | Red | 5 pints. |
| Sodium bromate | Oxy. M | 73.153, 73.154 | Yellow | 100 pounds. |
| Titanium metal powder, dry | F. S | No exemption, 73.208 | do | 75 pounds. |
| Zirconium, metallic, solutions or mixtures thereof, liquid. | F. L. | No exemption, 73.140 | Red | 5 pounds. |

### PART 73—SHIPPERS

#### SUBPART A—PREPARATION OF ARTICLES FOR TRANSPORTATION BY CARRIERS BY RAIL FREIGHT, RAIL, EXPRESS, HIGHWAY, OR WATER

1. Amend § 73.22 paragraph (c) Table (15 F. R. 8276, Dec. 2, 1950; 49 CFR 73.22, Rev. 1950) to read as follows:

§ 73.22 *Specification containers prescribed.* * * *

(c) * * *

| When these regulations call for specification numbers— | These specification containers may also be used— | |
|---|---|---|
| 1A | 1 | Boxed carboy, glass or earthenware. |
| 1B | 1 | Boxed carboy, lead. |
| 1C | 1 | Carboy in keg, glass or earthenware. |
| 3A | 3, 25, 26 | Cylinder |
| 3AA | 3, 25, 26 | Do. |
| 3B | 26 | Do. |
| 3C | 7 | Do. |
| 3D | 33 | Do. |
| 3E | 3 | Do. |
| 4A | 26 | Do. |
| 4B | 26, 38 | Do. |
| 4BA | 26, 38 | Do. |
| 4C | 7 | Do. |

* * * * *

2. Amend § 73.25 paragraph (a) and add paragraph (b) (15 F. R. 8277, Dec. 2, 1950; 49 CFR 73.25, Rev. 1950) to read as follows:

§ 73.25 *Specification containers in outside containers.* (a) Outside specification shipping containers containing no acids or other corrosive liquids may be shipped when tightly packed in strong outside fiberboard boxes or drums, wooden boxes, barrels or crates, or metal barrels or drums. The outside shipping container must be marked with the prescribed name of contents and labeled as required. Packages required by these regulations to be marked "This Side Up" must be packed in the outside package with their filling holes, up, and the outside package must be marked "This Side Up." The outside container must also be marked "Inside Packages Comply With Prescribed Specifications" unless the specification markings on the inside packages are visible through openings in the outside package.

(b) Outside specification shipping containers containing acids or other corrosive liquids, except nitric acid, perchloric acid, or hydrogen peroxide solution containing over 52 percent hydrogen peroxide by weight, may be shipped when tightly packed in strong outside fiberboard or wooden boxes, or in wooden crates, provided such outside container shall not contain any other article except as provided in §§ 73.258 to 73.261. The outside container shall be marked with the prescribed name of contents and labeled as required and shall be marked "This Side Up." The outside container must also be marked "Inside Packages Comply With Prescribed Specifications" unless the specification markings on the inside packages are visible through openings in the outside package.

3. Amend § 73.31 paragraphs (a) and Table, (d), (e) and (f), Note 1 to (g) and Note 1 to (l) (15 F. R. 8278, Dec. 2, 1950; 49 CFR 73.31, Rev. 1950) to read as follows:

§ 73.31 *Qualification, maintenance, and use of tank cars.* (a) Tanks mounted on or forming part of a car and built in compliance with the American Railway Association's specifications for tank cars prior to July 1, 1927; or built in compliance with the Commission's specifications for tanks of tank cars in force prior to the effective date of Parts 71–78 of this chapter, including tanks already constructed or under construction on the effective date hereof in compliance with trial specifications for fusion-welded tanks of tank cars are authorized for service, until further order of the Commission, as follows:

| Where these regulations call for specification numbers | These specification containers may also be used |
|---|---|
| 103 [4] [5] | A. R. A. II [4] [6], III [4] [6], IV [6]. |
| 103A [4] | A. R. A. II [3] [4], and III [3] [6]. |
| 103B [4] | A. R. A. II [4], and III [4], rubber lined. |
| 104 [4] | A. R. A. IV.[4] |
| 105A300 | A. R. A. V,[3] I. C. C. 105 [3]. |
| 106A500 | I. C. C. 27 cylinders mounted on or forming part of a car and classified as multi-unit tank car prior to Oct. 1, 1930.[6] |
| 106A800 | None. |
| 107A | None. |
| 108 | Wooden tanks built and authorized prior to July 1, 1927. |
| 108A | Wooden tanks built and authorized prior to July 1, 1927. |

[No change in notes.]

* * * * *

(d) For repairs to ICC–106A or 110A type or tank or equipment (see §§ 78.275, 78.276, and 78.293 of this chapter) therefor requiring welding, the owner of the tank, or party authorized by the owner, must secure approval from the Association of American Railroads' committee on tank cars of such repairs, and the welding and stress-relieving must be the same as authorized for manufacture of tank. Tank must be retested as prescribed in paragraph (g) of this section, before being returned to service.

(e) A tank car other than of the ICC–106A or 110A (§§ 78.275, 78.276, and 78.293 of this chapter) and 107A (§ 78.277 of this chapter) type that bears evidence of damage to the metal by fire must be withdrawn from transportation service: *Provided, however*, That where the damage to the tank is local only or confined to a section not exceeding 25 percent of the tank surface, the damaged material may be replaced.

(1) Tanks of ICC–106A, 110A, and 107A (§§ 78.275, 78.276, 78.293, and 78.277 of this chapter) type exposed to the action of fire must not again be placed in service until they have been inspected inside and outside, to determine that no reduction in wall thickness has resulted,

and properly heat-treated and retested. These operations must be carried out, supervised, and reported, as prescribed by these specifications for original heat-treatment and test.

(f) After alterations of tank cars or equipment therefor from original design, a certificate of compliance with the specifications, similar to that required in specifications 103, 103W, 104A, 104A–W, 105A300, 105A300W, 106A500, 107A, 108, and 110A500W (§§ 78.265, 78.280, 78.270, 78.285, 78.271, 78.286, 78.275, 78.277, 78.278, and 78.293 of this chapter), respectively, must be furnished to the car owner, to the Bureau of Explosives, and to the Secretary, Mechanical Division, Association of American Railroads.

(g) * * *

NOTE 1: Periodic retests of metal tanks, safety valves, and heater systems of tank cars authorized for transportation of flammable liquids and liquefied petroleum gases, now required to be made as prescribed in paragraph (g) of this section, may be waived because of the present emergency and until December 31, 1952, or until further order of the Commission.

* * * * *

(l) * * *

NOTE 1: Safety valves, now used on tank cars, A. R. A. classes II,[1] III,[1] and IV[1] and I. C. C. Specifications 103, 103W, 104 and 104W (§§ 78.265, 78.280, 78.269, and 78.284 of this chapter) are reported to permit slow leakage of vapor and it appears that material changes in the design and construction of these valves are necessary to make them tight. The Commission has notified the Association of American Railroads, representing the carriers, and the American Petroleum Institute, representing the shippers, that the necessary changes must be made with the least possible delay. To accomplish this result, new designs must be devised and tested experimentally, and in the meantime necessary shipments must be made in tank cars now available. Pending the accomplishment of these changes, tank cars with safety valves which permit only a slow leakage of vapor may be used.

4. Amend § 73.34 paragraph (f) (15 F. R. 8283, Dec. 2, 1950, 49 CFR 73.34, Rev. 1950) to read as follows:

§ 73.34 *Qualification, maintenance and use of safety devices.*

(f) *Safety devices.* Each cylinder containing compressed gas, unless excepted in this paragraph, must be equipped with one or more safety devices capable of preventing explosion of the normally charged cylinder when it is placed in a fire, and safety devices must be approved by the Bureau of Explosives as to type, location, and number of devices on each cylinder. Cylinders shall not be shipped with leaking safety devices. Safety devices must be tested for leaks before the charged cylinder is shipped from the cylinder filling plant; it is expressly forbidden to repair leaking fuse plug devices, where leak is through the fusible metal or between the fusible metal and the opening in the plug body, except by removal of the device and replacement of the fusible metal. Safety devices are not required on the following:

(1) Cylinders, other than those made under specification ICC–9 (§ 78.63 of this chapter) or ICC–40 (§ 78.66 of this chapter), not over 12 inches long, exclusive of neck, nor over 4½ inches outside diameter, unless containing a liquefied gas for which this part prescribes a service pressure of 1800 pounds per square inch or higher or containing a nonliquefied gas having a pressure in the cylinder of 1800 pounds per square inch or higher at 70° F.

(2) Cylinders containing nonliquefied gas under pressure of 300 pounds per square inch or less at 70° F.

(3) Cylinders containing poisonous gas or liquid as defined in § 73.326 (a).

(4) Cylinders containing fluorine, methyl mercaptan, or mono, di, or trimethylamine, anhydrous. Cylinders containing not over 10 pounds of nitrosyl chloride, or cylinders containing less than 165 pounds of anhydrous ammonia.

(5) Drums containing liquefied petroleum gas as provided for in § 73.312 (a) (5) and (6).

* * * * *

5. Amend § 73.34 paragraph (g) (3) (15 F. R. 8283, Dec. 2, 1950; 49 CFR 73.34, Rev. 1950) to read as follows:

(g) * * *

(3) By change of serial numbers or ownership marks or both; before remarking, report must be filed with the Bureau of Explosives, in sufficient detail and arranged consecutively according to registered ownership symbol and serial or lot numbers, so that specification marking, previous serial number, registered ownership symbol, and original test date can be determined for each cylinder.

* * * * *

6. Amend § 73.34 paragraph (k) and Table (15 F. R. 8284, Dec. 2, 1950; 49 CFR 73.34, Rev. 1950) to read as follows:

(k) The tests prescribed by paragraph (j) of this section, must be (for exceptions see paragraph (k) (1) to (11) of this section):

| Specification under which cylinders were made | Minimum retest pressure (pounds per square inch) |
|---|---|
| ICC–3 | 3,000 pounds. |
| ICC–3A, ICC–3AA, ICC–3D, ICC–4A, ICC–26 marked for filling at over 450 pounds. | 5/3 times the service pressure. (See § 73.301 (g).) |
| ICC–3B, ICC–3BN, ICC–4B, ICC–4BA, ICC–26 marked for filling at 450 pounds and below. | 2 times the service pressure. (See § 73.301 (g).) |
| ICC–3C, ICC–3E, ICC–4C, ICC–8, ICC–8AL. | Quinquennial test not required. |
| ICC–7 when used as authorized in § 73.312 (a) (4). | 300 pounds. |
| ICC–7 when not used under authority of § 73.312 (a) (4). | Quinquennial test not required. |
| ICC–4 | 700 pounds. |
| ICC–9 | 400 pounds. |
| ICC–25, ICC–38 | 500 pounds. |
| ICC–33 | 800 pounds. |

* * * * *

7. Cancel Exception (6) to paragraph (k) § 73.34 (15 F. R. 8284, Dec. 2, 1950; 49 CFR 73.34, Rev. 1950).

8. Amend Exception (7) to paragraph (k) § 73.34 (15 F. R. 8284, Dec. 2, 1950; (49 CFR 73.34, Rev. 1950) to read as follows:

(7) Cylinders made after January 1, 1920, in compliance with specification I. C. C. 4 (§ 78.48 of this chapter) may be retested decennially instead of quinquennially if the test is made at a pressure of not less than 700 pounds per square inch.

* * * * *

9. Amend § 73.34 paragraph (l) (15 F. R. 8284, Dec. 2, 1950; 49 CFR 73.34, Rev. 1950) to read as follows:

(l) Repair of specifications ICC–3A, 3AA, 3B, or 3C (§§ 78.36, 78.37, 78.38, or 78.40 of this chapter) cylinders by welding or brazing authorized, but only for the removal and replacement of neckrings and footrings attached to cylinders originally manufactured to conform to § 78.36–9 (a) of this chapter. Removal and replacement must be done by a regular manufacturer of this type of cylinder. After removal and before replacement of such parts, cylinders must be inspected, and defective ones rejected. Cylinders, neckrings, footrings, and method of replacement must conform to § 78.36–9 (a) of this chapter. Replacement must be followed by reheat treating, testing, inspection, and supervised and reported as prescribed by the specification covering their original manufacture. Inspector's reports must conform to § 78.36–22 (a) of this chapter and substitute the word repaired in place of manufactured. Show original markings and the new additional markings added, and statement: "Cylinders were carefully inspected for defects after removal of neckrings and footrings and after replacement, which replacement was made by process of _____." (Welding-brazing)

* * * * *

SUBPART B—EXPLOSIVES; DEFINITIONS AND PREPARATION

1. Amend § 73.88 paragraph (b) (15 F. R. 8293, Dec. 2, 1950; 49 CFR 73.88, Rev. 1950) to read as follows:

§ 73.88 *Definition of class B explosives.* * * *

(b) Ammunition for cannon with empty projectiles, inert-loaded projectiles, solid projectiles or without projectiles, or shell, is fixed ammunition assembled in a unit consisting of the cartridge case containing the propelling charge and primer with empty, inert-loaded, or solid projectiles, or without projectiles, which is fired from a cannon, mortar, gun, howitzer, or recoilless rifle.

* * * * *

2. Amend § 73.93 paragraph (d) (4) (15 F. R. 8294, Dec. 2, 1950; 49 CFR 73.93, Rev. 1950) to read as follows:

§ 73.93 *Smokeless powder for cannon.* * * *

(d) * * *

(4) Spec. 103 or 103W (§§ 78.265 or 78.280 of this chapter). Tank cars.

* * * * *

3. Amend § 73.94 paragraph (g) (4) (15 F. R. 8295, Dec. 2, 1950; 49 CFR 73.94, Rev. 1950) to read as follows:

§ 73.94 *Smokeless powder for small arms.* * * *

(g) * * *

(4) Spec. 103 or 103W (§§ 78.265 or 78.280 of this chapter). Tank cars.

4. Amend § 73.100 paragraph (b) (16 F. R. 5323, June 6, 1951; 49 CFR 73.100, Rev. 1950) to read as follows:

§ 73.100 *Definition of class C explosives.* * * *

(b) Small-arms ammunition, designed to be fired from a pistol, revolver, rifle, or shotgun held by the hand or by the hand and shoulder, or machine guns of caliber less than .75, is fixed ammunition consisting of a metallic or paper cartridge case; a primer and a propelling charge, with or without bullet, shot, tear gas material, tracer components, or incendiary compositions or mixtures, but not including bullets loaded with high explosives.

* * * * *

5. Amend § 73.108 paragraph (b) (1) (15 F. R. 8297, Dec. 2, 1950; 49 CFR 73.108, Rev. 1950) to read as follows:

§ 73.108 *Common fireworks.* * * *

(b) * * *

(1) Spec. 15A, 15B, 15C, 16A, or 19A (§§ 78.168, 78.169, 78.170, 78.185, or 78.190 of this chapter). Wooden Boxes. Gross weight not to exceed 200 pounds. When Spec. 15C boxes are used, devices must be packed in air-tight inside metal containers.

* * * * *

SUBPART C—FLAMMABLE LIQUIDS; DEFINITION AND PREPARATION

1. Add paragraphs (c) (13 and (c) (14) to § 73.118 (15 F. R. 8298, Dec. 2, 1950; 49 CFR 73.118, Rev. 1950) to read as follows:

§ 73.118 *Exemptions for flammable liquids.* * * *

(c) * * *

(13) Ethylene imine, inhibited.

(14) Zirconium, metallic, solutions, or mixtures thereof, liquid.

2. Amend § 73.119 paragraph (f) (3) Note 3 (15 F. R. 8299, Dec. 2, 1950; 49 CFR 73.119, Rev. 1950) to read as follows:

§ 73.119 *Flammable liquids not specifically provided for.* * * *

(f) *When the vapor pressure exceeds 27 pounds per square inch, absolute, at 100° F.* * * *

(3) * * *

NOTE 3: Spec. 104 or 104W (§§ 78.269 or 78.284 of this chapter) or ARA–IV[1] tank cars are authorized provided that they are equipped with approved fittings designed to provide for the loading, unloading, gauging, sampling, and taking temperature of the contents without removing the manhole closure; that safety valves are set to open at pressure of 35 pounds (with a tolerance of plus or minus 3 pounds), and are vapor tight at 28 pounds per square inch, gauge pressure; that bottom discharge outlets are of the same type as authorized for specification 104 or 104W tank cars; and that there is stenciled on each side of the tank above the specification mark, in letters and figures at least 1 inch high, "For vapor pressures not exceeding 40 pounds per square inch, absolute, at 100° F." Because of the present emergency and until further order of the Commission, spec. ICC 104 or 104W (§§ 78.269 or 78.284 of this chapter) tank cars, equipped with safety valves set to open at pressure of 35 pounds (with a tolerance of plus or minus 3 pounds) and which are vapor tight at 28 pounds per square inch, gauge pressure, are authorized provided that they are stenciled as required above.

* * * * *

3. Amend § 73.124 paragraph (a) (5) Note 1 (15 F. R. 8301, Dec. 2, 1950; 49 CFR 73.124, Rev. 1950) to read as follows:

§ 73.124 *Ethylene oxide.* (a) * * *

(5) * * *

NOTE 1: Because of the present emergency and until further order of the Commission, specification ARA–IV[1] and ICC–104 and 104W (§§ 78.269 and 78.284 of this chapter) tank cars, converted as follows, are authorized for use. Tanks must be tested to 75 pounds per square inch hydrostatic pressure and show no leakage with lagging removed. Bottom discharge outlet must be removed, the opening closed with a riveted plate, and a sump applied. Safety valves must be removed and replaced by two safety valves of the type and size used on ICC–104A or 104A–W (§§ 78.270 or 78.285 of this chapter) tank cars but set to open at 60 pounds per square inch instead of 75 pounds. The various approved dome fittings now required on ICC–104A or 104A–W (§§ 78.270 or 78.285 of this chapter) tank cars must be installed in an approved manner to provide for the loading, unloading, gauging, sampling, and taking of temperature of contents without removing the manhole closure. Tank jacket must be stenciled immediately above the mark ARA–IV,[1] ICC–104, or ICC–104W (§§ 78.269 or 78.284 of this chapter) with the words "For Ethylene Oxide Only".

* * * * *

4. Add § 73.139 paragraph (a) (15 F. R. 8302, Dec. 2, 1950; 49 CFR 73.139, Rev. 1950) to read as follows:

§ 73.139 *Ethylene imine, inhibited.* (a) Ethylene imine must be inhibited and must be packed in specification containers as follows:

(1) Spec. 15A or 15B (§§ 78.168 or 78.169 of this chapter). Wooden boxes, with inside containers which must be securely sealed glass ampules, contents not over 100 grams each, in tightly closed metal cans. If more than one ampule is packed in a metal can, ampules must be separated by fiberboard partitions. Ampules must be cushioned in vermiculite or equally efficient incombustible cushioning material in quantity sufficient to completely absorb contents in event of breakage. Not more than 5 pints of liquid may be packed in any outside wooden box.

5. Add § 73.140 paragraph (a) (15 F. R. 8302, Dec. 2, 1950; 49 CFR 73.140, Rev. 1950) to read as follows:

§ 73.140 *Zirconium, metallic, solutions, or mixtures thereof, liquid.* (a) Zirconium, metallic, solutions, or mixtures thereof, liquid, must be packed in specification containers as follows:

(1) Spec. 15A, 15B, or 15C (§§ 78.168, 78.169, or 78.170 of this chapter). Wooden boxes with inside metal containers. Each inside container shall not contain more than 15 individual glass jars, not exceeding 2-ounce capacity each, securely closed and completely cushioned in incombustible cushioning material in sufficient quantity to completely absorb the contents.

SUBPART D—FLAMMABLE SOLIDS AND OXIDIZING MATERIALS; DEFINITIONS AND PREPARATION

1. Amend § 73.163 paragraphs (a) (6) and (7), (15 F. R. 8305, Dec. 2, 1950; 49 CFR 73.163, Rev. 1950) to read as follows:

§ 73.163 *Chlorate of soda, chlorate of potash, and other chlorates.* (a) * * *

(6) Chlorates wet with 10 percent or more of water are authorized for shipment in tank cars, spec. 103 or 103W (§§ 78.265 or 78.280 of this chapter), when equally distributed therein.

(7) Chlorate of soda is authorized for shipment in tank cars, spec. 103 or 103W (§§ 78.265 or 78.280 of this chapter). Cars must be thoroughly cleaned before loading.

2. Amend § 73.176 paragraph (g) and cancel paragraph (g) (1), (15 F. R. 8306, Dec. 2, 1950; 49 CFR 73.176, Rev. 1950) to read as follows:

§ 73.176 *Matches.* * * *

(g) Matches, strike-on-box, book, and card, must be packed in outside fiberboard or wooden boxes. They may be packed in the same outside container with nonflammable articles when compactly packed in tightly closed inside containers or securely wrapped so as to prevent accidental ignition. When so packed, they are exempt from specification packaging, marking, and labeling requirements for transportation by rail freight, rail express, or highway. When for transportation by carrier by water, they are exempt from specification packaging and labeling requirements, but each outside container shall be marked "Book Matches", "Strike-On-Box Matches", or "Card Matches", as the case may be.

* * * * *

3. Amend § 73.206 paragraph (c) (1) (15 F. R. 8310, Dec. 2, 1950; 49 CFR 73.206, Rev. 1950) to read as follows:

§ 73.206 *Sodium or potassium, metallic, sodium amide, lithium metal, lithium silicon, and lithium hydride.* * * *

(c) * * *

(1) Spec. 105A300 or 105A300W (§§ 78.271 or 78.286 of this chapter.) Tank cars, having exterior heater coils fusion welded to tank shell and properly stress-relieved, the material to be in molten condition when loaded into the tank and allowed to solidify before car is offered to the carrier.

* * * * *

4. Amend § 73.208 paragraph (a) and add paragraph (b) (15 F. R. 8311, Dec. 2, 1950; 49 CFR 73.208, Rev. 1950) to read as follows:

§ 73.208 *Titanium metal powder, wet or dry*—(a) *Titanium metal powder, wet.* Titanium metal powder, wet, with not less than 20 percent water, must be packed in specification containers as follows:

(1) Spec. 15A or 15B (§§ 78.168 or 78.169 of this chapter). Wooden boxes with inside metal can of not less than 22-gauge, not to exceed 10 gallons capacity, tightly and securely closed. Not more than one such inside container may be packed in one outside container.

(b) *Titanium metal powder, dry.* Titanium metal powder, dry, must be packed in specification containers as follows:

(1) Spec. 15A or 15B (§§ 78.168 or 78.169 of this chapter.) Wooden boxes

with inside metal containers, tightly and securely closed by push-in covers, held in place by soldering at least four joints, or in screw-cap metal cans. Inside containers must not exceed 10 pounds net each. Inside containers must be cushioned by incombustible material such as rock wool or asbestos wool. Gross weight of outside package must not exceed 75 pounds each.

(2) Spec. 17H or 37D (§§ 78.118 or 78.125 of this chapter). Metal barrels or drums (single-trip) with inside metal drum of not less than 20-gauge metal and with closure secured by positive means. The inside container shall be completely surrounded by not less than one inch of incombustible cushioning material.

5. Amend § 73.227 paragraph (a) (2) (16 F. R. 5325, June 6, 1951; 49 CFR 73.227, Rev. 1950) to read as follows:

§ 73.227 *Urea peroxide.* (a) * * *

(2) Spec. 21A or 21B (§§ 78.222 or 78.223 of this chapter). Fiber drums completely coated on the inside with a suitable wax, synthetic coating, or metal foil suitable to the lading; or fiber drums having a metal foil (laminated between two sheets of kraft paper with thermoplastic adhesive) moisture and water barrier wound into the sidewall of the drum and located not more than 2 plies from the interior of drum but not to be wound as the first ply; a metal foil moisture and water barrier must also be present in the fiber or wood heading; exterior of drum sidewall must be protected with a water resistant coating; in addition to the tests prescribed by §§ 78.222–4 or 78.223–4 of this chapter, a drum having been given a 4-foot diagonal bottom chime drop must, after being emptied, withstand complete immersion of the bottom in 6 inches of water for 4 hours without leakage to the interior.

* * * * *

SUBPART E—ACIDS AND OTHER CORROSIVE LIQUIDS; DEFINITION AND PREPARATION

1. Add paragraphs (a) (9) and (a) (10) to § 73.245 (15 F. R. 8313, Dec. 2, 1950; 49 CFR 73.245, Rev. 1950) to read as follows:

§ 73.245 *Acids or other corrosive liquids not specifically provided for.* (a) * * *

(9) Spec. 5D (§ 78.84 of this chapter). Rubber lined metal barrels or drums. Any barrel or drum that shows evidence of damage must be tested before shipment for defects in lining in the manner prescribed in § 78.84–15 (a) of this chapter.

(10) Spec. 5H (§ 78.87 of this chapter). Lead-lined metal barrels or drums.

2. Amend § 73.246 paragraph (a) (1) (15 F. R. 8313, Dec. 2, 1950; 49 CFR 73.246, Rev. 1950) to read as follows:

§ 73.246 *Antimony pentafluoride.* (a) * * *

(1) Spec. 3A150, 3AA150, 3E1800, 3B240, 4B240, or 4BA240 (§§ 78.36, 78.37, 78.42, 78.38, 78.50, or 78.51 of this chapter). Cylinders closed by means of iron or steel threaded plugs.



3. Amend § 73.247 paragraph (a) (6) (15 F. R. 8314, Dec. 2, 1950; 49 CFR 73.247, Rev. 1950) to read as follows:

§ 73.247 *Acetyl chloride, antimony pentachloride, benzoyl chloride, benzyl chloride, pyro sulfuryl chloride, silicon chloride, sulfur chloride (mono and di), thionyl chloride, tin tetrachloride (anhydrous), and titanium tetrachloride.* (a) * * *

(6) Spec. 103A or 103A–W (§§ 78.266 or 78.281 of this chapter). Tank cars except that for tin tetrachloride (anhydrous) Spec. 105A300 or 105A300W (§§ 78.271 or 78.286 of this chapter) tank cars must be used. Benzyl chloride must be stabilized when loaded in unlined tanks.

* * * * *

4. Amend § 73.248 paragraphs (a) (4) and (a) (5) (15 F. R. 8314, Dec. 2, 1950; 49 CFR 73.248, Rev. 1950) to read as follows:

§ 73.248 *Acid sludge, sludge acid, spent sulfuric acid, or spent mixed acid.* (a) * * *

(4) Spec. 103A or 103A–W (§§ 78.266 or 78.281 of this chapter). Tank cars, provided the product is sufficiently liquid to be unloaded through the dome.

(5) Spec. 103 or 103W (§§ 78.265 or 78.280 of this chapter). Tank cars, provided the product is too viscous to be unloaded through the dome.

* * * * *

5. Amend § 73.254 paragraph (a) (4) (15 F. R. 8315, Dec. 2, 1950; 49 CFR 73.254, Rev. 1950) to read as follows:

§ 73.254 *Chlorosulphonic acid and mixtures of chlorosulfonic acid-sulfur trioxide.* (a) * * *

(4) Spec. 103A or 103A–W (§§ 78.266 or 78.281 of this chapter). Tank cars.

* * * * *

6. Amend § 73.255 paragraph (a) (4) (15 F. R. 8315, Dec. 2, 1950; 49 CFR 73.255, Rev. 1950) to read as follows:

§ 73.255 *Dimethyl sulfate.* (a) * * *

(4) Spec. 103A or 103A–W (§§ 78.266 or 78.281 of this chapter). Tank cars.

7. Amend § 73.262 paragraph (a) (6) (15 F. R. 8316, Dec. 2, 1950; 49 CFR 73.262, Rev. 1950) to read as follows:

§ 73.262 *Hydrobromic acid.* (a) * * *

(6) Spec. 103B or 103B–W (§§ 78.267 or 78.282 of this chapter). Tank cars.

8. Amend § 73.264 paragraph (a) (8) and (11), add paragraph (a) (15) (15 F. R. 8317, Dec. 2, 1950; 49 CFR 73.264, Rev. 1950) to read as follows:

§ 73.264 *Hydrofluoric acid.* (a) * * *

(8) Spec. 103A, 103A–W, 104A, 104A–W, 105A, 105A–W, or ARA–IV–A[1] (§§ 78.266, 78.281, 78.270, 78.285, 78.281 to 78.274, 78.286 to 78.289 of this chapter). Unlined metal tank cars which have been subjected to adequate passification or neutralization process. (See Note 1 to subparagraph (7) of this paragraph). Authorized only for acid of 60 to 80 percent strength. If tanks are washed out with water they must be repassified before reshipment.

[No change in Note 1.]

* * * * *

(11) Spec. 103B or 103B–W (§§ 78.267 or 78.282 of this chapter). Tank cars, rubber-lined tanks. Authorized only for acid not over 40 percent strength.

* * * * *

(15) Spec. 17C (§ 78.115 of this chapter). Metal drums (single-trip) with welded bung flanges. Authorized only for aqueous hydrofluoric acid containing 65 percent to 81 percent acidity, as hydrofluoric acid, or other concentrations of acid not greater than 81 percent acidity, as hydrofluoric acid, which are suitably inhibited so as to be no more corrosive to drum steel than 70 percent hydrofluoric acid at 80° F.

9. Amend § 73.264 paragraph (b) (1) (15 F. R. 8317, Dec. 2, 1950; 49 CFR 73.264, Rev. 1950) to read as follows:

(b) * * *

(1) Spec. 3,[1] 3A, 3AA, 3B, 3C, 3E, 4, 4A, 25,[1] or 38,[1] also Spec. 4B or 4C if not brazed. (§§ 78.36, 78.37, 78.38, 78.40, 78.42, 78.48, 78.49, also 78.50 or 78.52 of this chapter.) Cylinders. Filling density must not exceed 85 percent of the pounds water weight capacity of the cylinder.

* * * * *

10. Amend § 73.265 paragraph (b) (3) (15 F. R. 8318, Dec. 2, 1950; 49 CFR 73.265, Rev. 1950) to read as follows:

§ 73.265 *Hydrofluosilicic acid.* * * *

(b) * * *

(3) Spec. 103B or 103B–W (§§ 78.267 or 78.282 of this chapter). Tank cars, rubber-lined tanks.

* * * * *

11. Amend § 73.267 paragraphs (a) (2) and (a) (3) (15 F. R. 8319, Dec. 2, 1950; 49 CFR 73.267, Rev. 1950) to read as follows:

§ 73.267 *Mixed acid (nitric and sulfuric acid) (nitrating acid).* (a) * * *

(2) Spec. 5A or 5C (§§ 78.81 or 78.83 of this chapter). Metal barrels or drums. Spec. 5C drums to be fabricated of type 347 stainless steel only. (See paragraph (b) of this section.)

(3) Spec. 103A or 103A–W (§§ 78.266 or 78.281 of this chapter). Tank cars. (See paragraph (b) of this section.)

* * * * *

12. Amend § 73.268 paragraphs (b) (1) (15 F. R. 8319, Dec. 2, 1950; 49 CFR 73.268, Rev. 1950) to read as follows:

§ 73.268 *Nitric acid.* * * *

(b) * * *

(1) Spec. 103C, 103C–W, or 103AL–W (§§ 78.268, 78,283, or 78.291 of this chapter). Tank cars.

* * * * *

13. Amend § 73.274 paragraph (a) (3) (15 F. R. 8321, Dec. 2, 1950; 49 CFR 73.274, Rev. 1950) to read as follows:

§ 73.274 *Fluosulfonic acid.* (a) * * *

(3) Spec. 103A or 103A–W (§§ 78.266 or 78.281 of this chapter). Tank cars.

14. Amend § 73.283 paragraph (a) (1) (15 F. R. 8322, Dec. 2, 1950; 49 CFR 73.283, Rev. 1950) to read as follows:

§ 73.283 *Bromine trifluoride.* (a) * * *

(1) Spec. 3A150, 3AA150, 3E1800, 3B240 or 4B240 (§§ 78.36, 78.37, 78.42,

78.38, or 78.50 of this chapter). Cylinders.

15. Amend § 78.284 paragraphs (a) and (b) (15 F. R. 8322, 8323, Dec. 2, 1950; 49 CFR 73.284, Rev. 1950) to read as follows:

§ 73.284 *Bromine pentafluoride.* (a) Bromine pentafluoride, when offered for transportation by carriers by rail freight, highway, or water, must be packed in specification containers as follows:

(1) Spec. 3A150, 3AA150, 3E1800, or 4B240 (§§ 78.36, 78.37, 78.42, or 78.50 of this chapter). Cylinders not over 120 pounds water capacity (nominal), filled to not over 210 percent of water capacity. Cylinders must be plugged and fitted with valve protection caps. Spec. 3E1800 (§ 78.42 of this chapter) cylinders must be packed in strong outside wooden boxes and contain not more than one pound of bromine pentafluoride.

(b) Bromine pentafluoride, when offered for transportation by rail express must be packed in specification containers as follows:

(1) Spec. 3A150, 3AA150, 3E1800, or 4B240 (§§ 78.36, 78.37, 78.42, or 78.50 of this chapter). Cylinders containing not more than one pound of bromine pentafluoride. Cylinders must be plugged and fitted with valve protection caps and must be packed in strong outside wooden boxes.

16. Amend § 73.285 paragraph (a) (1) (15 F. R. 8323, Dec. 2, 1950; 49 CFR 73.285, Rev. 1950) to read as follows:

§ 73.285 *Chlorine trifluoride.* (a) * * *

(1) Spec. 3A150, 3AA150, 3E1800, 3B240, or 4B240 (§§ 78.36, 78.37, 78.42, 78.38, or 78.50 of this chapter). Cylinders.

SUBPART F—COMPRESSED GASES; DEFINITION AND PREPARATION

1. Amend § 73.306 paragraph (a) (1) (15 F. R. 8325, 8326, Dec. 2, 1950; 49 CFR 73.306, Rev. 1950) to read as follows:

§ 73.306 *Liquefied gases, except gas in solution or poisonous gas.* (a) * * *

(1) Spec. 3,[1] 3A, 3AA, 3B, 3E, 4, 4A, 4B, 4BA (§§ 78.36, 78.37, 78.38, 78.42, 78.48, 78.49, 78.50, and 78.51 of this chapter), 25,[1] 26,[1] or 38,[1] also Spec. 9 or 40 (§§ 78.63 or 78.66 of this chapter), except that mixtures containing carbon bisulfide (disulfide), ethyl chloride, ethylene oxide, nickel, carbonyl, spirits of nitroglycerin, zinc ethyl, or poisonous articles, class A, B, or C, as defined by this part are not permitted unless otherwise prescribed in this part. (See §§ 73.34 and 73.301 (g).)

* * * * *

2. Amend § 73.307 paragraph (a) (1) (15 F. R. 8326, Dec. 2, 1950; 49 CFR 73.307, Rev. 1950) to read as follows:

§ 73.307 *Nonliquefied gases, except gas in solution or poisonous gas.* (a) * * *

(1) Spec. 3,[1] 3A, 3AA, 3B, 3C, 3D, 3E, 4, 4A, 4B, 4BA, 4C (§§ 78.36, 78.37, 78.38, 78.40, 78.41, 78.42, 78.48, 78.49, 78.50, 78.51, or 78.52 of this chapter), 7,[1] 25,[1] 26,[1] 33,[1] or 38.[1] (See §§ 73.34 and 73.301 (g)).

3. Amend § 73.308 paragraph (a), Table and Note 1 (15 F. R. 8326, Dec. 2, 1950; 49 CFR 73.308, Rev. 1950) to read as follows:

§ 73.308 *Compressed gases in cylinders.* (a) * * *

| Kind of gas | Maximum permitted filling density (see Note 12) (percent) | Cylinders (see Note 11) marked as shown in this column must be used except as provided in Note 1 and § 73.34 (a) to (e). |
|---|---|---|
| Anhydrous ammonia. (See Note 9) | 54 | ICC-4; ICC-3A480; ICC-3AA480; ICC-3A480X; ICC-4A480; ICC-3. |
| Carbon dioxide—nitrous oxide mixtures | 68 | ICC-3A1800; ICC-3AA1800; ICC-3. |
| Chlorine. (See Note 6) | 125 | ICC-3A480; ICC-3AA480; ICC-25; ICC-3. |
| Cyclopropane | 55 | ICC-3A225; ICC-3AA225; ICC-3B225; ICC-4A225; ICC-4B225; ICC-4BA225; ICC-7-300; ICC-3; ICC-3E1800. |
| Dichlorodifluoromethane | 119 | ICC-3A225; ICC-3AA225; ICC-3B225; ICC-4A225; ICC-4B225; ICC-4BA225; ICC-9. |
| Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture). | (1) | ICC-3A240; ICC-3AA240; ICC-3B240; ICC-4A240; ICC-4B240; ICC-4BA240; ICC-9. |
| Difluoroethane | 79 | ICC-3A150; ICC-3AA150; ICC-3B150; ICC-4B150; ICC-4BA225. |
| Difluoromonochloroethane | 100 | ICC-3A150; ICC-3AA150; ICC-3B150; ICC-4B150; ICC-4BA225. |
| Dimethylamine, anhydrous | 59 | ICC-3A150; ICC-3AA150; ICC-3B150; ICC-4B150; ICC-4BA225. |
| Ethane | 35.8 | ICC-3A1800; ICC-3AA1800; ICC-3. |
| Do | 36.8 | ICC-3A2000; ICC-3AA2000. |
| Ethylene | 31.0 | ICC-3A1800; ICC-3AA1800; ICC-3. |
| Do | 32.5 | ICC-3A2000; ICC-3AA2000. |
| Hydrogen sulfide | 68 | ICC-3A480; ICC-3AA480; ICC-3B480; ICC-4A480; ICC-4B480; ICC-4BA480; ICC-26-480. |
| Insecticide, liquefied gas. (See Note 8) | (2) | ICC-3A300; ICC-3AA300; ICC-3B300; ICC-4B300; ICC-4BA300; ICC-9; ICC-40. |
| Liquefied carbon dioxide. (See Notes 3 and 5). | 68 | ICC-3A1800; ICC-3AA1800; ICC-3. |
| Liquefied nonflammable gases, liquids other than those classified as flammable, corrosive, or poisonous and mixtures or solutions thereof, charged with nitrogen, carbon dioxide, or air. (See Note 10.) | (3) | ICC-3A300; ICC-3AA300; ICC-4B300; ICC-4BA300; ICC-4D300. |
| Methyl chloride. (See Note 4) | 84 | ICC-3A225; ICC-3AA225; ICC-3B225; ICC-4A225; ICC-4B225; ICC-4BA225; ICC-3; ICC-4; ICC-25; ICC-26-300; ICC-38. |
| Methyl mercaptan | 80 | ICC-3A240; ICC-3AA240; ICC-3B240; ICC-4B240; ICC-4BA240. |
| Monochlorodifluoromethane | 105 | ICC-3A240; ICC-3AA240; ICC-3B240; ICC-4B240; ICC-4BA240. |
| Monochlorotrifluoromethane | 100 | ICC-3A1800; ICC-3AA1800; ICC-3. |
| Monomethylamine, anhydrous | 60 | ICC-3A150; ICC-3AA150; ICC-3B150; ICC-4B150; ICC-4BA225. |
| Nitrosyl chloride | 110 | ICC-3BN400 only. |
| Nitrous oxide. (See Note 2) | 68 | ICC-3A1800; ICC-3AA1800; ICC-3. |
| Propylene | 44 | ICC-3A300; ICC-3AA300; ICC-3B300; ICC-4A300; ICC-4B300; ICC-4BA300; ICC-3; ICC-4; ICC-25; ICC-26-300; ICC-38. |
| Sulfur dioxide | 125 | ICC-3A225; ICC-3AA225; ICC-3B225; ICC-4A225; ICC-4B225; ICC-4BA225; ICC-3; ICC-4; ICC-25; ICC-26-150; ICC-38. |
| Sulfur hexafluoride | 110 | ICC-3A1800; ICC-3AA1800; ICC-3. |
| Tetrafluoroethylene, inhibited | 90 | ICC-3A1200; ICC-3AA1200; ICC-3E1800. |
| Trifluorochloroethylene | 115 | ICC-3A300; ICC-3AA300; ICC-3B300; ICC-4A300; ICC-4B300; ICC-4BA300. |
| Trimethylamine, anhydrous | 57 | ICC-3A150; ICC-3AA150; ICC-3B150; ICC-4B150; ICC-4BA225. |
| Vinyl chloride, inhibited. (See Note 7) | 84 | ICC-4B300, without brazed seams; ICC-4BA300, without brazed seams; ICC-3A300; ICC-3AA300; ICC-25. |
| Vinyl methyl ether, inhibited. (See Note 7). | 68 | ICC-4B300, without brazed seams; ICC-4BA300, without brazed seams; ICC-3A300, ICC-3AA300; ICC-3B300; ICC-25. |

[1] Section 73.304 (a) and (b).
[2] Section 73.304 (a) and (b).
[3] Section 73.304 (a) and (b) and the pressure in the container must not at 130° F. exceed 5/4 the marked service pressure of the container.

NOTE 1: Cylinders complying with spec. 3E (§ 78.42 of this chapter) are also authorized for all gases named in this table for which steel cylinders are authorized except where ICC-3A2000 and 3AA2000 (§§ 78.36, 78.37 of this chapter) cylinders are specified.

* * * * *

4. Amend § 73.311 paragraph (a) (15 F. R. 8327, Dec. 2, 1950; 49 CFR 73.311, Rev. 1950) to read as follows:

§ 73.311 *Fluorine.* (a) Fluorine must be shipped in metal cylinders complying with spec. 3A2000, 3AA2000, or 3BN400 (§§ 78.36, 78.37, or 78.39 of this chapter), equipped with valve protection caps and subject to § 73.34 (f) (4); cylinders must not be charged to over 400 pounds per square inch, gauge, at 70° F.; cylinders must not contain over 6 pounds of gas.

5. Amend § 73.312 paragraph (a) (1) (15 F. R. 8327, Dec. 2, 1950; 49 CFR 73.312, Rev. 1950) to read as follows:

§ 73.312 *Liquefied petroleum gas.* (a) * * *

(1) Spec. 3,[1] 3A, 3AA, 3B, 3E, 4, 4B, 4BA (§§ 78.36, 78.37, 78.38, 78.42, 78.48, 78.50, 78.51 of this chapter), 4B240X[1] (see appendix A to Subpart C of Part 78 of this chapter), 4B240FLW or 9 (§§ 78.54 or 78.63 of this chapter). 25,[1] 26,[1] or 38.[1] Cylinders authorized under § 73.34 (a) to (e) may be used.

* * * * *

[Notes 1 and 2 remain unchanged.]

* * * * *

6. Amend § 73.314 paragraph (a), Table, Notes 2, 8, 11 and 12, paragraphs (b) and (e) (15 F. R. 8328, 8329, Dec. 2, 1950; 16 F. R. 5325, 5326, June 6, 1951; 49 CFR 73.314, Rev. 1950) to read as follows:

§ 73.314 *Compressed gases in tank cars.* (a) Compressed gases must not be shipped in tank cars except as provided in paragraphs (b) to (g) of this section, § 73.432, and in the following table:

| Kind of gas | Maximum permitted filling density, Note 1 | Required type of tank car, Note 2 |
|---|---|---|
| | *Percent* | |
| Anhydrous ammonia | 50 | ICC–106A500, 106A500X, Note 12. |
| | 57 | ICC–105A300, 105A300W. |
| Argon | Note 5 | ICC–107A. |
| Butadiene (pressure not exceeding 75 pounds per square inch at 105° F.). | Note 3 | ICC–104A, 104A–W, Note 9. |
| Chlorine | 125 | ICC–106A500, 106A500X, Note 12. |
| | 125 | ICC–105A300, 105A300W, Note 8. |
| Crude nitrogen fertilizer solution | Note 6 | ICC–106A500, 106A500X. |
| | | ICC–105A300, 105A300W. |
| Dichlorodifluoromethane | 119 | ICC–106A500, 106A500X, 110A500W, Note 12. |
| | 125 | ICC–105A300, 105A300W. |
| Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture). | Note 6 | ICC–106A500, 106A500X, Note 12. |
| | | ICC–105A300, 105A300W. |
| Difluoroethane | 79 | ICC–106A500, 106A500X, Note 12. |
| Difluoromonochloroethane | 100 | ICC–106A500, 106A500X, Note 12. |
| Dimethylamine, anhydrous | 59 | ICC–106A500, 106A500X. |
| | 62 | ICC–105A300, 105A300W. |
| Dimethyl ether | 59 | ICC–106A500, 106A500X. |
| | 62 | ICC–105A300, 105A300W. |
| Dispersant gas, n. o. s. | Note 16 | ICC–106A500, 106A500X, Note 12. |
| Fertilizer ammoniating solution containing free ammonia. | Note 6 | ICC–106A500, 106A500X. |
| | | ICC–105A300, 105A300W. |
| Helium | Note 5 | ICC–107A. |
| Hydrogen | Note 5 | ICC–107A, Note 7. |
| Hydrogen sulfide | 68 | ICC–106A800, 106A800X, Notes 12 and 13. |
| Liquid carbon dioxide | Note 10 | ICC–105A500, 105A500W, 105A600, 105A600W, Note 11. |
| Liquid hydrocarbon gas | Note 6 | Notes 5 and 9. |
| Liquefied petroleum gas (pressure not exceeding 75 pounds per square inch at 105° F.). | Note 3 | ICC–104A, 104A–W, Note 9. |
| Liquefied petroleum gas (pressure not exceeding 225 pounds per square inch at 105° F.). | Note 3 | ICC–105A300, 105A300W, Notes 5 and 9. |
| Liquefied petroleum gas (pressure not exceeding 300 pounds per square inch at 105° F.). | Note 3 | ICC–105A400, 105A400W, Notes 5 and 9. |
| Liquefied petroleum gas (pressure not exceeding 375 pounds per square inch at 105° F.). | Note 3 | ICC–105A500, 105A500W, Notes 5 and 9. |
| Liquefied petroleum gas (pressure not exceeding 375 pounds per square inch at 130° F.). | Note 4 | ICC–106A500, 106A500X. |
| Liquefied petroleum gas (pressure not exceeding 450 pounds per square inch at 105° F.). | Note 3 | ICC–105A600, 105A600W, Notes 5 and 9. |
| Methyl chloride | 84 | ICC–106A500, 106A500X, Note 12. |
| | | ICC–105A300, 105A300W. |
| Methyl mercaptan | 80 | ICC–106A500, 106A500X, Note 13. |
| Monochlorodifluoromethane | 105 | ICC–106A500, 106A500X, 110A500W, Note 12. |
| | 110 | ICC–105A300, 105A300W. |
| Monochlorotetrafluoroethane | 125 | ICC–106A500, 106A500X, Note 12. |
| Monomethylamine, anhydrous | 60 | ICC–106A500, 106A500X. |
| | 62 | ICC–105A300, 105A300W. |
| Nitrogen | Note 5 | ICC–107A. |
| Nitrosyl chloride | 124 | ICC–105A300W, Note 15. |
| Oxygen | Note 5 | ICC–107A. |
| Sulfur dioxide | 125 | ICC–106A500, 106A500X, Note 12. |
| | 125 | ICC–105A300, 105A300W. |
| Trimethylamine, anhydrous | 57 | ICC–106A500, 106A500X. |
| | 59 | ICC–105A300, 105A300W. |
| Vinyl chloride, inhibited | 84 | ICC–106A500, 106A500X, Note 12. |
| | 87 | ICC–105A300, 105A300W. |

* * * * *

NOTE 2: When tank cars marked ICC–105A300 or ICC–105A300W (§§ 78.271 or 78.286 of this chapter) are prescribed, tank cars marked ICC–105A400, 105A400W, 105A500, 105A500W, 105A600, and 105A600W (§§ 78.272, 78.287, 78.273, 78.288, 78.274 and 78.289 of this chapter) may also be used. When ICC–104A or ICC–104A–W (§§ 78.270 or 78.285 of this chapter) tank cars are prescribed, tank cars marked ICC–105A300, 105A300W, 105A400, 105A400W, 105A500, 105A500W, 105A600, and 105A600W (§§ 78.271, 78.286, 78.272, 78.287, 78.273, 78.288, 78.274, and 78.289 of this chapter), may also be used, and when ICC–106A500 and 106A500X (§§ 78.275 of this chapter) tank cars are prescribed, tank cars marked ICC–106A800 and 106A800X (§ 78.276 of this chapter) may also be used.

* * * * *

NOTE 8: For tank cars of other than ICC–106A type (§§ 78.275 or 78.276 of this chapter), used for shipping chlorine, tests prescribed in §§ 78.271–15 and 78.286–19 must be made at intervals of 2 years or less and interior pipes of liquid discharge valves must be equipped with check valves of approved design.

* * * * *

NOTE 11: Before an ICC–105A500, 105A500W, 105A600, or 105A600W (§§ 78.273, 78.288, 78.274, or 78.289 of this chapter) tank car may be used for the transportation of liquefied carbon dioxide, the following requirements must be met: Tank must be lagged with an approved insulation material of a thickness so that the thermal conductance is not more than 0.03 B. t. u. per square foot, per degree F. differential in temperature per hour. Tank must be equipped with one safety valve of approved design set to open at a pressure not exceeding three-fourths of the test pressure of the tank and one frangible disc device of approved design set to function at a pressure less than the test pressure of the tank. The discharge capacity of each of these safety devices must be sufficient to prevent building up of pressure in tank in excess of three-fourths of the test pressure of the tank. Tank must be equipped with two pressure-regulating valves of approved design, one set to open at three-fifths of the test pressure of the tank and one set to open at two-thirds of the test pressure of the tank. Each regulating valve and safety device must have its final discharge piped to the outside of the tank.

NOTE 12: Tanks complying with specification 106A500 or 106A500X (§ 78.275 of this chapter), containing chlorine, anhydrous ammonia, sulfur dioxide, methyl chloride, dichlorodifluoromethane, monochlorodifluoromethane, monochlorotetrafluoroethane, vinyl chloride, inhibited, difluoroethane, difluoromonochloroethane, dispersant gas, n. o. s., or dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture), tanks complying with specification 110A500W (§ 78.293 of this chapter), containing dichlorodifluoromethane or monochlorodifluoromethane, or tanks complying with specification 106A800 or 106A800X (§ 78.276 of this chapter), containing hydrogen sulfide, may be transported on trucks or semi-trailers only, when securely chocked or clamped thereon to prevent shifting, and provided adequate facilities are present for handling tanks where transfer in transit is necessary. See § 74.560 of this chapter, for rail freight-motor vehicle shipments.

(b) The gas pressure at 105° F. in any lagged tank of tank cars of specs. 104A, 104A–W, 105A300, 105A300W, 105A400, 105A400W, 105A500, 105A500W, 105A600, and 105A600W (§§ 78.270, 78.285, 78.271, 78.286, 78.272, 78.287, 78.273, 78.288, 78.274, and 78.289 of this chapter), and at 130° F. in any unlagged tank of tank cars of specs. 106A500, 106A500X, 106A800, 106A800X, and 110A500W (§§ 78.275, 78.276, and 78.293 of this chapter) must not exceed three-fourths times the prescribed retest pressure of the tank. The gas pressure at 130° F. in any unlagged tank of tank cars of the 107A (§78.277 of this chapter) series must not exceed seven-tenths of the marked test pressure of the tank.

[Note 1 remains unchanged.]

* * * * *

(e) Tank cars containing compressed gasses must not be shipped unless they were loaded by or with the consent of the owner thereof; and must not be loaded with any gas which combines chemically with the gas previously loaded therein, until all residue has been removed and interior of tank thoroughly cleaned. For cars of the ICC–106A and 110A500W (§§ 78.275, 78.276, and 78.293 of this chapter) type, the tanks must be placed in position and attached to car structure by the shipper.

* * * * *

SUBPART G—POISONOUS ARTICLES; DEFINITIONS AND PREPARATION

1. Amend § 73.326 paragraph (a) (1) (15 F. R. 8332, Dec. 2, 1950, 49 CFR 73.326, Rev. 1950) to read as follows:

§ 73.326 *Extremely dangerous poisons, class A, poison gas label; definition.* (a) * * *

(1) Bromacetone.

2. Amend § 73.329 paragraphs (a) and (b), cancel paragraphs (c) and (d) (15 F. R. 8332, Dec. 2, 1950; 16 F. R. 5326, June 6, 1951; 49 CFR 73.329, Rev. 1950) to read as follows:

§ 73.329 *Bromacetone; chlorpicrin and methyl chloride mixtures.* (a) *Bromacetone.* Bromacetone, when offered for transportation by carriers by rail freight, highway, or water, must be packed in specification containers as follows:

(1) As prescribed in § 73.328.

(2) Spec. 15A, 15B, 15C, or 16A (§§ 78.168, 78.169, 78.170, or 78.185 of this chapter). Wooden boxes with inside glass

bottles or tubes in hermetically sealed metal cans in corrugated fiberboard cartons, spec. 2C (§ 78.22 of this chapter). Bottles must contain not over 1 pound of liquid each, must be filled to not over 95 percent capacity, must be tightly and securely closed, and must be cushioned in cans with at least ½ inch of absorbent material. Cans must be made of metal at least 32 gauge United States standard. Total amount of liquid in outside box must not exceed 24 pounds.

(b) *Chlorpicrin and methyl chloride mixtures.* Chlorpicrin and methyl chloride mixtures, in addition to containers prescribed in § 73.328, when offered for transportation by carriers by rail freight, highway, or water, may be shipped in specification containers as follows:

(1) Spec. 3A, 3AA, 3B, 3C, 3E, 4A, 4B, or 4C (§§ 78.36, 78.37, 78.38, 78.40, 78.42, 78.49, 78.50, or 78.52 of this chapter) not over 250 pounds water capacity (nominal). Valves or other closing devices must be protected, to prevent injury in transit, by screw-on metal caps or by packing the cylinders in strong boxes or crates. Cylinders having a wall thickness of less than 0.10 inch must be packed in boxes or crates (see § 73.25).

3. Amend § 73.332 paragraph (a) (3) (15 F. R. 8333, Dec. 2, 1950; 49 CFR 73.332, Rev. 1950) to read as follows:

§ 73.332 *Hydrocyanic acid, liquid (prussic acid) and hydrocyanic acid liquefied.* (a) * * *

(3) Spec. 3A480, or 3AA480 (§§ 78.36, 78.37 of this chapter). Metal cylinders of not over 125 pounds water capacity (nominal), minimum wall thickness 0.147 inch, and in no case shall the wall stress exceed 24,000 pounds per square inch when calculated by the formula in § 78.36–10 (b) of this chapter; valve protection cap must be used and be at least 3/16 inch thick, gas-tight, with 3/16 inch faced seat for gasket and with United States standard form thread; the cap must be capable of preventing injury or distortion of the valve when it is subjected to an impact caused by allowing cylinder, prepared as for shipment, to fall from an upright position with side of cap striking a solid steel object projecting not more than 6 inches above floor level.

* * * * *

4. Amend § 73.334 paragraph (a) (1) (15 F. R. 8333, Dec. 2, 1950; 49 CFR 73.334, Rev. 1950) to read as follows:

§ 73.334 *Hexaethyl tetraphosphate parathion, and tetraethyl pyrophosphate mixtures.* (a) * * *

(1) Spec. 3A300, 3AA300, 3B300, 4A300, 4B240, or 4BA240 (§§ 78.36, 78.37, 78.38, 78.49, 78.50, or 78.51 of this chapter). Metal cylinders, charged with not more than 5 pounds of the mixture and to a maximum filling density of 80 percent of the water capacity. Cylinders must not be equipped with eduction tubes or fusible plugs. Valves must be of a type acceptable to the Bureau of Explosives.

* * * * *

5. Amend § 73.336 paragraphs (a) (2) and (a) (3) (15 F. R. 8334, Dec. 2, 1950; 49 CFR 73.336, Rev. 1950) to read as follows:

§ 73.336 *Nitrogen dioxide, liquid. (nitrogen peroxide, tetroxide).* (a) * * *

(2) Spec. 3A480 or 3AA480 (§§ 78.36, 78.37 of this chapter) or 25.[1] Metal cylinders with valve removed; valve opening to be closed by means of a solid metal plug with tapered thread properly luted to prevent leakage; valve protection cap must be used and be at least 3/16 inch thick, gastight, with 3/16 inch faced seat for gasket and with United States standard form thread. Use of this container will be permitted because of the present emergency and until further order of the Commission.

(3) Spec. 106A500 or 106A500X (§ 78.275 of this chapter). Tank cars. Each container must be equipped with valve protection caps, gastight, which must be approved by the Bureau of Explosives; containers must not be equipped with safety devices of any type; containers must be filled so that they will not be liquid full at 130° F.

6. Add paragraph (b) (8) to § 73.345 (15 F. R. 8334, Dec. 2, 1950; 49 CFR 73.345, Rev. 1950) to read as follows:

§ 73.345 *Exemptions for poisonous liquids, Class B.* * * *

(b) * * *

(8) Chlorpicrin and chlorpicrin mixtures containing no compressed gas or poisonous liquid, class A.

7. Amend § 73.346 paragraph (a) (10) (15 F. R. 8334, Dec. 2, 1950; 49 CFR 73.346 Rev. 1950) to read as follows:

§ 73.346 *Poisonous liquids not specifically provided for.* (a) * * *

(10) Spec. 103, 103W, 103A, or 103A–W (§§ 78.265, 78.280, 78.266, or 78.281 of this chapter). Tank cars.

* * * * *

8. Amend § 73.347 paragraph (a) (2) (15 F. R. 8335, Dec. 2, 1950; 49 CFR 73.347, Rev. 1950) to read as follows:

§ 73.347 *Aniline oil.* (a) * * *

(2) Spec. 103, 103W, 103A, or 103A–W (§§ 78.265, 78.280, 78.266, or 78.281 of this chapter). Tank cars.

* * * * *

9. Amend § 73.352 paragraphs (a) (4) (15 F. R. 8335, Dec. 2, 1950; 49 CFR 73.352, Rev. 1950) to read as follows:

§ 73.352 *Liquid sodium or potassium cyanide.* (a) * * *

(4) Spec. 103, 103W, 103A, or 103A–W (§§ 78.265, 78.280, 78.266, or 78.281 of this chapter). Tank cars.

10. Amend § 73.353 paragraphs (a) (3), (5) and (b) (15 F. R. 8335, Dec. 2, 1950; 49 CFR 73.353, Rev. 1950) to read as follows:

§ 73.353 *Methyl bromide.* (a) * * *

(3) Spec. 3A300, 3AA300, 3B300, 3E1800, or 4B300 (§§ 78.36, 78.37, 78.38, 78.42, or 78.50 of this chapter). Metal cylinders of not over 125 pounds water capacity (nominal). Valves or other closing devices must be protected, to prevent injury in transit, by screw-on metal caps or by packing the cylinders in strong boxes or crates. Cylinders having a wall thickness of less than 0.10 inch must be packed in boxes or crates. (See § 73.25)

[No change in Note 1.]

* * * * *

(5) Spec. 104A, 104A–W, 106A500, or 106A500X (§§ 78.270, 78.285, or 78.275 of this chapter). Tank cars.

(b) Outage must be sufficient to prevent tank car from becoming entirely filled with liquid at the following temperature: Spec. 104A or 104A–W (§§ 78.270 or 78.285 of this chapter), at 105° F., Spec. 106A500 or 106A500X (§ 78.275 of this chapter), at 130° F.

* * * * *

11. Amend § 73.354 paragraph (a) (4) (15 F. R. 8335, 8336, Dec. 2, 1950; 49 CFR 73.354, Rev. 1950) to read as follows:

§ 73.354 *Motor fuel antiknock compound or tetraethyl lead.* (a) * * *

(4) Spec. 105A300 or 105A300W (§§ 78.271 or 78.286 of this chapter). Tank cars. Stenciled on both sides of the tanks, "For Motor Fuel Antiknock Compound Only".

* * * * *

12. Add § 73.357 paragraphs (a), (b), and (c) (15 F. R. 8336, Dec. 2, 1950; 49 CFR 73.357, Rev. 1950) to read as follows:

§ 73.357 *Chlorpicrin and chlorpicrin mixtures containing no compressed gas or poisonous liquid, class A*—(a) *Chlorpicrin.* Chlorpicrin, when offered for transportation by carriers by rail freight, highway, or water, must be packed in specification containers as follows:

(1) Spec. 15A, 15B, 15C, or 16A (§§ 78.168, 78.169, 78.170, or 78.185 of this chapter). Wooden boxes with inside glass bottles or tubes in hermetically sealed metal cans in corrugated fiberboard cartons, spec. 2C (§ 78.22 of this chapter). Bottles must contain not over 1 pound of liquid each, must be filled to not over 95 percent capacity, must be tightly and securely closed, and must be cushioned in cans with at least ½ inch of absorbent material. Cans must be made of metal at least 32 gauge United States standard. Total amount of liquid in outside box must not exceed 24 pounds.

(2) Spec. 12B (§ 78.205 of this chapter). One-piece corrugated fiberboard boxes at least 200-pound test with inside glass bottles or tubes in hermetically sealed metal cans in individual unsealed one-piece corrugated fiberboard boxes, spec. 12B (§ 78.205 of this chapter) at least 200-pound test. Bottles must contain not over 1 pound of liquid each, must be filled to not over 95 percent capacity, must be tightly and securely closed, and must be cushioned in cans with at least ½ inch of absorbent material. Cans must be made of metal at least 32 gauge United States standard. Total amount of liquid in outside box must not exceed 12 pounds.

(3) Spec. 12B, (§ 78.205 of this chapter). One-piece corrugated fiberboard boxes at least 200-pound test with not more than one inside glass bottle or tube in a hermetically sealed metal can. Bottles must contain not over 1 pound of

liquid, must be filled to not over 95 percent capacity, must be tightly and securely closed, and must be cushioned in cans with at least ½ inch of absorbent material. Cans must be made of metal at least 32 gauge United States standard.

(b) *Chlorpicrin and mixtures of chlorpicrin containing no compressed gas or poisonous liquid, class A.* Chlorpicrin and mixtures of chlorpicrin containing no compressed gas or poisonous liquid, class A, in addition to containers prescribed in paragraph (a) of this section, when offered for transportation by carriers by rail freight, highway, or water, may be shipped in specification containers as follows:

(1) Spec. 3A, 3AA, 3B, 3C, 3D, 3E, 4A, 4B, or 4C (§§ 78.36, 78.37, 78.38, 78.40, 78.41, 78.42, 78.49, 78.50, 78.52 of this chapter) not over 250 pounds water capacity (nominal). Valves or other closing devices must be protected, to prevent injury in transit, by screw-on metal caps or by packing the cylinders in strong boxes or crates. Cylinders having a wall thickness of less than 0.10 inch must be packed in boxes or crates (see § 73.25).

(2) Spec. 5A (§ 78.81 of this chapter). Metal drums of not exceeding 33 gallons capacity with welded seams.

NOTE 1: Because of the present emergency and until further order of the Commission, drums not exceeding 55 gallons capacity with welded seams are authorized for mixtures containing not over 15 percent by volume of chlorpicrin.

(c) Chlorpicrin and mixtures of chlorpicrin containing no compressed gas or poisonous liquid, class A, when offered for transportation by rail express must be packed in specification containers as follows (also authorized for transportation by carriers by rail freight, highway, or water):

(1) Spec. 15A, 15B, 15C, or 16A (§§ 78.168, 78.169, 78.170, or 78.185 of this chapter). Wooden boxes with inside glass bottles or tubes in hermetically sealed metal cans in corrugated fiberboard cartons, spec. 2C (§ 78.22 of this chapter). Bottles must contain not over 1 pound of liquid each, must be filled to not over 95 percent capacity, must be tightly and securely closed, and must be cushioned in cans with at least ½ inch of absorbent material. Cans must be made of metal at least 32 gauge United States standard. Total amount of liquid in outside box must not exceed 24 pounds.

(2) Spec. 15A (§ 78.168 of this chapter). Wooden boxes, metal strapped, with chlorpicrin absorbed in an efficient absorbing material packed in hermetically sealed metal cans not exceeding 1 quart capacity each.

(3) Spec. 12B (§ 78.205 of this chapter). One-piece corrugated fiberboard boxes at least 200-pound test with inside glass bottles or tubes in hermetically sealed metal cans in individual unsealed one-piece corrugated fiberboard boxes, Spec. 12B (§ 78.205 of this chapter) at least 200-pound test. Bottles must contain not over 1 pound of liquid each, must be filled to not over 95 percent capacity, must be tightly and securely closed, and must be cushioned in cans with at least ½ inch of absorbent material. Cans must be made of metal at least 32 gauge United States standard. Total amount of liquid in outside box must not exceed 12 pounds.

(4) Spec. 12B (§ 78.205 of this chapter). One-piece corrugated fiberboard boxes at least 200-pound test with not more than one inside glass bottle or tube in a hermetically sealed metal can. Bottles must contain not over 1 pound of liquid, must be filled to not over 95 percent capacity, must be tightly and securely closed, and must be cushioned in cans with at least ½ inch of absorbent material. Cans must be made of metal at least 32 gauge United States standard.

13. Amend § 73.365 paragraph (a) (13) (15 F. R. 8336, Dec. 2, 1950; 49 CFR 73.365, Rev. 1950) to read as follows:

§ 73.365 *Poisonous solids not specifically provided for.* (a) * * *

(13) Spec. 103, 103W, 103A, or 103A–W (§§ 78.265, 78.280, 78.266, or 78.281 of this chapter). Tank cars.

14. Amend § 73.367 paragraph (b) (15 F. R. 8337, Dec. 2, 1950; 49 CFR 73.367, Rev. 1950) to read as follows:

§ 73.367 *Arsenical compounds n. o. s., arsenate of lead, calcium arsenate, Paris green, and arsenical mixtures.* * * *

(b) Arsenical compounds n. o. s. containing not more than 6 percent arsenic of which not more than 0.5 percent is water soluble must be packed in specification containers as follows:

* * * * *

15. Amend § 73.369 paragraphs (a) (1) and (13) (15 F. R. 8337, Dec. 2, 1950; 49 CFR 73.369, Rev. 1950) to read as follows:

§ 73.369 *Carbolic acid (phenol), not liquid.* (a) * * *

(1) Spec. 5, 5A, 5B, 5C, 6A, 6B, or 6C (§§ 78.80, 78.81, 78.82, 78.83, 78.97, 78.98, or 78.99 of this chapter). Metal barrels or drums.

* * * * *

(13) Spec. 103, 103W, 103AL–W, 103A, 103A–W, or 103A–AL–W §§ 78.265, 78.280, 78.291, 78.266, 78.281, or 78.292 of this chapter). Tank cars.

16. Amend § 73.370 paragraph (a) (1) (15 F. R. 8337, Dec. 2, 1950; 49 CFR 73.370, Rev. 1950) to read as follows:

§ 73.370 *Cyanides, or cyanide mixtures.* (a) * * *

(1) Spec. 15A, 15B, or 15C (§§ 78.168, 78.169, or 78.170 of this chapter). Wooden boxes with metal inside containers, spec. 2F (§ 78.25 of this chapter), not over 25 pounds capacity each; or hermetically sealed (soldered) metal lining, spec. 2F (§ 78.25 of this chapter).

* * * * *

17. Amend § 73.370 paragraphs (b) (1) and (2) (15 F. R. 8337, Dec. 2, 1950; 49 CFR 73.370, Rev. 1950) to read as follows:

(b) * * *

(1) Cyanides, or cyanide mixtures, in tightly closed metal inside containers, not over 1 pound each, securely cushioned and packed in outside wooden or fiberboard boxes or in wooden barrels. Net weight of cyanides or cyanide mixtures in any outside container, not over 25 pounds.

(2) Cyanide mixtures in tightly closed metal inside containers, securely cushioned and packed in outside wooden or fiberboard boxes or in wooden barrels. Net weight of cyanide mixtures in any outside container, not over 5 pounds.

* * * * *

18. Amend § 73.373 paragraph (a) (3) (16 F. R. 5326, June 6, 1951; 49 CFR 73.373, Rev. 1950) to read as follows:

§ 73.373 *Paranitraniline.* (a) * * *

(3) Spec. 21A or 21B (§§ 78.222 or 78.223 of this chapter). Fiber drums, gross weight 400 pounds; side walls must be of at least 10-ply construction having strength not less than 1,200 pounds Mullen or Cady test; drums must withstand prescribed tests when filled to authorized gross weight of 400 pounds.

19. Amend § 73.374 paragraph (a) (2) (16 F. R. 5326, June 6, 1951; 49 CFR 73.374, Rev. 1950) to read as follows:

§ 73.374 *Nitrochlorbenzene, meta or para.* (a) * * *

(2) Spec. 21A or 21B (§§ 78.222 or 78.223 of this chapter). Fiber drums, authorized only for nitrochlorbenzene, para, flaked, gross weight 400 pounds; side walls must be of at least 10-ply construction having strength not less than 1,200 pounds Mullen or Cady test; drums must withstand prescribed tests when filled to authorized gross weight of 400 pounds.

20. Amend § 73.392 paragraph (a) (3) (15 F. R. 8339, Dec. 2, 1950; 49 CFR 73.392, Rev. 1950) to read as follows:

§ 73.392 *Exemptions for radioactive materials.* (a) * * *

(3) The package must be such that no significant alpha, beta, or neutron radiation is emitted from the exterior of the package and the gamma radiation at any surface of the package must be less than 10 milliroentgens for 24 hours.

* * * * *

21. Add § 73.395 paragraph (a) (15 F. R. 8340, Dec. 2, 1950; 49 CFR 73.395, Rev. 1950) to read as follows:

§ 73.395 *Cleaning cars and vehicles.* (a) Any railroad car or motor vehicle which has been contaminated by radioactive material must be thoroughly cleaned by the consignee, or by a qualified authorized agent of the consignee receiving the radioactive material, in such a manner as to remove all radioactive material from the car or vehicle, and a certificate to that effect must be furnished to the local agent of the carrier or to the driver of the motor vehicle.

22. Add § 73.396 paragraph (a) (15 F. R. 8340, Dec. 2, 1950; 49 CFR 73.396, Rev. 1950) to read as follows:

§ 73.396 *Radioactive materials handling.* (a) When radioactive materials are loaded in cars by the shipper, the shipper shall observe all applicable requirements of § 75.655 (j) of this chapter.

SUBPART H—MARKING AND LABELING EXPLOSIVES AND OTHER DANGEROUS ARTICLES

1. Amend § 73.402 paragraphs (a) and (a) (1) to (10) inclusive (15 F. R. 8340, Dec. 2, 1950; 49 CFR 73.402, Rev. 1950) to read as follows:

§ 73.402 *Labeling dangerous articles.* (a) Each package containing any dangerous article or combination or mixture of dangerous articles as defined by Part 73 of this chapter must be conspicuously labeled by the shipper as follows, except as otherwise provided:

(1) "Red label" as described in § 73.405 on containers of flammable liquids as defined in § 73.115, except when exempted from the regulations by § 73.118 or when "red" label is required by paragraph (a) (4) of this section.

(2) "Yellow label" as described in § 73.406 on containers of flammable solids and oxidizing materials as defined in § 73.150 and § 73.151, except when exempted from the regulations by § 73.153 and § 73.183.

(3) "White label" as described in § 73.407 (a) (1), (2) and (3) on containers of acids, alkaline caustic liquids or corrosive liquids as defined in § 73.240, except when exempted from the regulations by § 73.244.

(4) "Red label" as described in § 73.408 (a) (1) on containers of flammable compressed gases as defined in § 73.300, except when exempted from the regulations by § 73.302.

(5) "Green label" as described in § 73.408 (a) (2) on containers of nonflammable compressed gases as defined in § 73.300, except when exempted from the regulations by § 73.302 or when "red" label or "poison gas" label is required by paragraphs (a) (4) or (a) (6) of this section.

(6) "Poison gas" label as described in § 73.409 (a) (1) on containers of Class A poisons as defined in § 73.326.

(7) "Poison" label as described in § 73.409 (a) (2) on containers of class B poison liquids or solid as defined in § 73.343, except when exempted from the regulations by § 73.345 and § 73.364 or when "poison gas" label is required by paragraph (a) (6) of this section.

(8) "Radioactive materials" label as described in § 73.414 (a) on containers of Class D poisons, Group I and II as defined in § 73.391, except when exempted by § 73.392.

(9) "Radioactive materials" label as described in § 73.414 (b) on containers of Class C poisons, Group III as defined in § 73.391, except when exempted by § 73.392 or when red "radioactive materials" label is required by paragraph (a) (8) of this section.

(10) "Tear gas" label as described in § 73.409 (a) (3) on containers of poisons, Class C as defined in § 73.381, except when "poison gas" label is required by paragraph (a) (6) of this section.

* * * * *

2. Cancel § 73.403, paragraphs (a), (b) and (c) (15 F. R. 8341, Dec. 2, 1950; 49 CFR 73.403, Rev. 1950).

PART 74—CARRIERS BY RAIL FREIGHT

SUBPART C—PLACARDS ON CARS

1. Amend § 74.541, paragraph (a) (1) (15 F. R. 8350, Dec. 2, 1950; 49 CFR 74.541, Rev. 1950) to read as follows:

§ 74.541 *"Dangerous" placards; or "Dangerous—class D poison" placards.* (a) * * *

(1) Cars containing one or more packages bearing red, yellow, white acid, or corrosive liquid caution labels, or white "poison" labels, as prescribed by §§ 73.405 to 73.408 and 73.409 (a) (2) of this chapter, or without labels as authorized in § 73.402 (c) of this chapter.

* * * * *

PART 75—CARRIERS BY MAIL EXPRESS

SUBPART A—TRANSPORTATION OF EXPLOSIVES BY THE RAILWAY EXPRESS AGENCY, INCORPORATED, IN PASSENGER OR EXPRESS TRAIN SERVICE

Add Subpart A § 75.675 to Part 75 (15 F. R. 8360, Dec. 2, 1950) (49 CFR Part 75, Rev. 1950.) to read as follows:

§ 75.675 *Explosives via Railway Express Agency, Inc.* (a) Except as provided in this section, shipments of explosives may be tendered for transportation by Railway Express Agency in passenger or express train service only when the Commission finds that an emergency requires such expedited movement. Emergency shipments shall be subject to regulations which the Commission deems advisable or necessary in the interest of the public in each emergency:

Exception No. 1: Samples of explosives for laboratory examination, fireworks, or other similar authorized explosives may continue to be transported in passenger or express train service, subject to the published regulations.

Exception No. 2: In time of war or of national emergency proclaimed by the President, shipments of explosives by, for or to the Armed Forces of the United States of America may be tendered for transportation in passenger or express train service when such shipments comply with the special regulations furnished to the Department of Defense, Railroads and the Railway Express Agency, Incorporated.

PART 78—SHIPPING CONTAINER SPECIFICATIONS

SUBPART C—SPECIFICATIONS FOR CYLINDERS

1. Amend § 78.43–9 paragraph (a) (15 F. R. 8397, Dec. 2, 1950; 49 CFR 78.43–9, Rev. 1950) to read as follows:

§ 78.43–9 *Neckrings and footrings.* (a) Welding for any purpose whatsoever is prohibited except as follows:

(1) Welding is authorized for the attachment of neckrings and footrings which are nonpressure parts, and only to the tops and bottoms. Cylinders, neckrings, and footrings must be made of weldable steel, carbon content of which must not exceed 0.25 percent.

(2) As permitted in § 78.43–8.

[No change in Note 1.]

2. Amend § 78.51–20 paragraph (a) Table I (16 F. R. 5328, June 6, 1951; 49 CFR 78.51–20, Rev. 1950) to read as follows:

§ 78.51–20 *Authorized steel.* (a) * * *

TABLE I—AUTHORIZED MATERIALS

| Designation | Chemical analysis—limits in percent | | | | |
|---|---|---|---|---|---|
| | 1315 [2] [4] | HIS [2] [4] | MAY [2] [4] | NAX [2] [4] | COR [2] [4] |
| Carbon | 0.10/0.20 | 0.12 max | 0.12 max | 0.20 max | 0.12 max. |
| Manganese | 1.10/1.65 | 0.50/0.90 | 0.50/1.00 | 0.45/0.75 | 0.20/0.50. |
| Phosphorus | 0.045 max | 0.05/0.12 | 0.06/0.12 | 0.045 max | 0.07/0.15. |
| Sulfur | 0.05 max | 0.05 max | 0.05 max | 0.05 max | 0.05 max. |
| Silicon | 0.15/0.35 | 0.15 max | 0.10/0.50 | 0.50/0.90 | 0.25/0.75. |
| Chromium | | | 0.40/1.00 | 0.45/0.70 | 0.50/1.25. |
| Molybdenum | | 0.08/0.18 | | | |
| Zirconium | | | | 0.05/0.25 | |
| Nickel | | 0.45/0.75 | 0.25/0.75 | | 0.65 max. |
| Copper | 0.40 max | 0.95/1.30 | 0.30/0.70 | | 0.25/0.55. |
| Aluminum | | 0.12/0.27 | | | |
| Heat treatment authorized | [3] | [3] | [3] | [3] | [3]. |
| Maximum stress | 35,000 | 35,000 | 35,000 | 35,000 | 35,000. |

| Designation | SCX [2] [4] | 4017 [2] [4] | OTY [2] [4] [5] | RDT [2] [4] [6] | YOL [2] [4] [6] |
|---|---|---|---|---|---|
| Carbon | 0.20 max | 0.13/0.20 | 0.15 max | 0.12 max | 0.15 max. |
| Manganese | 0.60/1.00 | 0.75/1.10 | 0.90/1.40 | 0.50/1.00 | 0.30/0.60. |
| Phosphorus | 0.045 max | 0.04 max | 0.09/0.135 | 0.040 max | 0.04 max. |
| Sulfur | 0.045 max | 0.04 max | 0.04 max | 0.050 max | 0.05 max. |
| Silicon | 0.15/0.30 | 0.25/0.35 | 0.10 max | | |
| Chromium | 0.15/0.50 | | | | |
| Molybdenum | 0.15/0.35 | 0.25/0.35 | | 0.10/0.30 | |
| Zirconium | | | | | |
| Nickel | | | | 0.50/1.20 | 1.50/2.00. |
| Copper | 0.20/0.50 | | 0.30/0.70 | 0.50/1.00 | 0.75/1.25. |
| Aluminum | | | | | |
| Heat treatment authorized | [3] | [3] | [3] | [3] | [3]. |
| Maximum stress | 35,000 | 35,000 | 35,000 | 35,000 | 35,000. |

[1] A heat of steel made under any of the above specifications, chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the standard permissible variations from specified chemical ranges and limits published in the American Iron and Steel Institute Products Manual, section 10, dated June 1945, are not exceeded or are approved by the Bureau of Explosives.

[2] This designation shall not be restrictive and the commercial steel is limited in analysis shown in the table.

[3] Any suitable heat treatment in excess of 1,100° F., except that liquid quenching is not permitted.

[4] Addition of other elements to obtain alloying effect is not authorized.

[5] Grain size 6 or finer according to A. S. T. M. Spec. E 19–46.

[6] Only fully killed steel authorized.

3. Amend § 78.60–4 paragraph (a) Table I (16 F. R. 5328, June 6, 1951; 49 CFR 78.60–4, Rev. 1950) to read as follows:

§ 78.60–4 *Authorized steel.* (a) * * *

TABLE I—AUTHORIZED MATERIALS

| Designation | Chemical analysis—limits in percent | | | | |
|---|---|---|---|---|---|
| | 1315 [2 4] | HIS [2 4] | MAY [2 4] | NAX [2 4] | COR [2 4] |
| Carbon | 0.10/0.20 | 0.12 max. | 0.12 max. | 0.20 max. | 0.12 max. |
| Manganese | 1.10/1.65 | 0.50/0.90 | 0.50/1.00 | 0.45/0.75 | 0.20/0.50. |
| Phosphorus | 0.045 max. | 0.05/0.12 | 0.06/0.12 | 0.045 max. | 0.07/0.15. |
| Sulfur | 0.05 max. | 0.05 max. | 0.05 max. | 0.05 max. | 0.05 max. |
| Silicon | 0.15/0.35 | 0.15 max. | 0.10/0.50 | 0.50/0.90 | 0.25/0.75. |
| Chromium | | | 0.40/1.00 | 0.45/0.70 | 0.50/1.25. |
| Molybdenum | | 0.08/0.18 | | | |
| Zirconium | | | | 0.05/0.25 | |
| Nickel | | 0.45/0.75 | 0.25/0.75 | | 0.65 max. |
| Copper | 0.40 max. | 0.95/1.30 | 0.30/0.70 | | 0.25/0.55. |
| Aluminum | | 0.12/0.27 | | | |
| Heat treatment authorized | [3] | [3] | [3] | [3] | [3]. |
| Maximum stress | 35,000 | 35,000 | 35,000 | 35,000 | 35,000. |
| | SCX [2 4] | 4017 [2 4] | OTY [2 4 5] | RDT [2 4 5 6] | YOL [2 4 5 6] |
| Carbon | 0.20 max. | 0.13/0.20 | 0.15 max. | 0.12 max. | 0.15 max. |
| Manganese | 0.60/1.00 | 0.75/1.10 | 0.90/1.40 | 0.50/1.00 | 0.30/0.60. |
| Phosphorus | 0.045 max. | 0.040 max. | 0.09/0.135 | 0.040 max. | 0.04 max. |
| Sulfur | 0.045 max. | 0.040 max. | 0.040 max. | 0.050 max. | 0.05 max. |
| Silicon | 0.15/0.30 | 0.25/0.35 | 0.10 max. | | |
| Chromium | 0.15/0.50 | | | | |
| Molybdenum | 0.15/0.35 | 0.25/0.35 | | 0.10/0.30 | |
| Zirconium | | | | | |
| Nickel | | | | 0.50/1.20 | 1.50/2.00. |
| Copper | 0.20/0.50 | | 0.30/0.70 | 0.50/1.00 | 0.75/1.25. |
| Aluminum | | | | | |
| Heat treatment authorized | [3] | [3] | [3] | [3] | [3]. |
| Maximum stress | 35,000 | 35,000 | 35,000 | 35,000 | 35,000. |

[1] A heat of steel made under any of the above specifications, chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the standard permissible variations from specified chemical ranges and limits published in the American Iron and Steel Institute Products Manual, section 10, dated June 1945, are not exceeded or are approved by the Bureau of Explosives.
[2] This designation shall not be restrictive and the commercial steel is limited in analysis shown in the table.
[3] Any suitable heat treatment in excess of 1,100° F., except that liquid quenching is not permitted.
[4] Addition of other elements to obtain alloying effects is not authorized.
[5] Grain size 6 or finer according to A. S. T. M. Spec. E 19–46.
[6] Only fully killed steel authorized.

SUBPART D — SPECIFICATIONS FOR METAL BARRELS, DRUMS, KEGS, CASES, TRUNKS AND BOXES

1. Amend § 78.80–8 paragraph (a) (15 F. R. 8432, Dec. 2, 1950; 49 CFR 78.80–8, Rev. 1950) to read as follows:

§ 78.80–8 *Rolling hoops.* (a) Separate hoops to have tight fit on shell and be firmly secured in place. Beading under rolling hoops not permitted. Attachment to drum body by spot welding, except for continuous resistance method, not permitted. Welding of I bar type directly to body of drum in any manner not permitted.

2. Amend § 78.83–11 paragraph (a) (16 F. R. 5329, June 6, 1951; 49 CFR 78.83–11, Rev. 1950) to read as follows:

§ 78.83–11 *Marking.* (a) Marking on each container by embossing on head with raised marks, or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by welding not less than 20 percent of the perimeter.

* * * * *

3. Amend § 78.86–8 paragraph (a) (15 F. R. 8437, Dec. 2, 1950; 49 CFR 78.86–8, Rev. 1950) to read as follows:

§ 78.86–8 *Rolling hoops.* (a) Separate hoops to have tight fit on shell and be firmly secured in place. Beading under rolling hoops not permitted. Attachment to drum body by spot welding, except for continuous resistance method, not permitted. Welding of I bar type directly to body of drum in any manner not permitted.

4. Amend § 78.98–6 paragraph (a) (15 F. R. 8443, Dec. 2, 1950; 49 CFR 78.98–6, Rev. 1950) to read as follows:

§ 78.98–6 *Rolling hoops.* (a) Separate hoops to have tight fit on shell and be firmly secured in place. Beading under rolling hoops not permitted. Attachment to drum body by spot welding, except for continuous resistance method, not permitted. Welding of I bar type directly to body of drum in any manner not permitted.

5. Amend § 78.99–6 paragraph (a) (15 F. R. 8444, Dec. 2, 1950; 49 CFR 78.99–6, Rev. 1950) to read as follows:

§ 78.99–6 *Rolling hoops.* (a) Separate hoops to have tight fit on shell and be firmly secured in place. Beading under rolling hoops not permitted. Attachment to drum body by spot welding, except for continuous resistance method, not permitted. Welding of I bar type directly to body of drum in any manner not permitted.

6. Amend § 78.100–6 paragraph (a) (15 F. R. 8445, Dec. 2, 1950; 49 CFR 78.100–6, Rev. 1950) to read as follows:

§ 78.100–6 *Rolling hoops.* (a) Separate hoops to have tight fit on shell and be firmly secured in place. Beading under rolling hoops not permitted. Attachment to drum body by spot welding, except for continuous resistance method, not permitted. Welding of I bar type directly to body of drum in any manner not permitted.

SUBPART F—SPECIFICATIONS FOR FIBERBOARD BOXES, DRUMS, AND MILLING TUBES

Amend § 78.214–15 paragraph (a) (15 F. R. 8480, Dec. 2, 1950; 49 CFR 78.214–15, Rev. 1950) to read as follows:

§ 78.214–15 *Authorized gross weight (when packed) and parts required.* (a) Box to be of solid fiberboard, special waterproofed, a least 300-pound test, and weighing at least 250 pounds per thousand square feet. Tubes to be of solid or corrugated fiberboard at least 200-pound test and of 1 piece with adjoining edges stitched, taped, or glued. Glued lap not less than 1¼ inch; others 1½ inch. Lap must be firmly glued throughout entire area of contact with glue or adhesive which cannot be dissolved in water after the film application has dried.

[Note 1 remains the same.]

* * * * *

SUBPART I—SPECIFICATIONS FOR TANK CARS

Amend § 78.293 paragraph AAR–5 (j–10) (16 F. R. 5335, June 6, 1951) (16 F. R. 5768, June 16, 1951) (49 CFR 78.293, Rev. 1950.) to read as follows:

§ 78.293 *Specification for tank cars having metallic arc fusion-welded steel tanks Class ICC–110A–500–W.* * * *

AAR–5 (j–10) Identification markers, the images of which will appear on the film, shall be placed adjacent to the weld and their location accurately and permanently stamped near the weld on the outside surface of the shell, or shell section, so that a defect appearing on the radiograph may be accurately located in the actual weld.

*It is further ordered,* That the foregoing amendments to the aforesaid regulations shall have full force and effect on November 30, 1951, and that such regulations as herein amended shall thereafter be observed until further order of the Commission.

*It is further ordered,* That compliance with the aforesaid regulations as herein amended is hereby authorized on and after the date of service of this order.

*And it is further ordered,* That copies of this order be served upon all parties of record herein, and that notice shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of Federal Register.

(Sec. 204, 49 Stat. 546, as amended, sec. 835, 62 Stat. 739; 49 U. S. C. 304, 18 U. S. C. Sup. 835)

By the Commission, Division 3.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 51–10845; Filed, Sept. 7, 1951; 8:51 a. m.]

# TITLE 26—INTERNAL REVENUE

## Chapter I—Bureau of Internal Revenue, Department of the Treasury

### Subchapter C—Miscellaneous Excise Taxes

[Regulations 18]

### PART 192—FERMENTED MALT LIQUORS

*Preamble.* 1. These regulations "Regulations 18, Fermented Malt Liquors" (26 CFR, Part 192) are a republication of Regulations 18, 1940 edition (26 CFR, Part 192, 5 F. R. 1919) and all amendments and modifications thereof through July 24, 1951.

2. These regulations consist only of previously approved material but the text has been rearranged and renumbered to conform to the Federal Register Regulations (13 F. R. 5929).

3. These regulations shall, on and after August 1, 1951, supersede Regulations 18 (26 CFR, Part 192, 5 F. R. 1919); Treasury Decision 5005 (5. F. R. 1918); Treasury Decision 5074 (6 F. R. 5061); Treasury Decision 5654 (13 F. R. 5370); Treasury Decision 5736 (14 F. R. 5508); Treasury Decision 5769 (15 F. R. 501); and Treasury Decision 5847 (16 F. R. 7201).

4. These regulations shall not affect or limit any act done or any liability incurred under any regulations superseded hereby, or any suit, action, or proceeding had or commenced in any civil, administrative, or criminal cause and proceeding prior to the effective date of these regulations, nor shall these regulations release, acquit, affect, or limit any offense committed in violation of previously existing regulations, or any penalty, liability or forfeiture incurred prior to such date.

5. It is found that compliance with the notice and public rule-making procedure and effective date limitations of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of the regulations in this part for the reason that the changes made are of a technical and clarifying nature and do not adversely affect the legitimate industry.

LAWS RELATING TO THE PRODUCTION AND SALE OF FERMENTED MALT LIQUORS

5 U. S. C. 22 Departmental regulations.
19 U. S. C. 1309 Supplies for certain vessels and aircraft.
26 U. S. C. 1650 War tax rates of certain miscellaneous taxes.
26 U. S. C. 2815 Conditions of approval of distiller's bond.
26 U. S. C. 2829 Installation of meters, tanks, and other apparatus.
26 U. S. C. 3104 Withdrawal of fermented liquors to industrial alcohol plants.
26 U. S. C. 3150 Tax [Fermented Liquors].
26 U. S. C. 3152 Other provisions relating to stamps.
26 U. S. C. 3153 Removals free of tax.
26 U. S. C. 3155 Requirements on brewers.
26 U. S. C. 3156 Permit to operate brewery temporarily at another place.
26 U. S. C. 3157 Bottling fermented liquors.
26 U. S. C. 3158 Brewery premises.
26 U. S. C. 3159 Penalties and forfeitures.
26 U. S. C. 3160 Gallon defined.
26 U. S. C. 3170 Transfer and delegation of powers.
26 U. S. C. 3171 Records, statements, and returns.
26 U. S. C. 3176 Rules and regulations.
26 U. S. C. 3250 Tax [Special (Occupational)].
26 U. S. C. 3251 Casual sales.
26 U. S. C. 3253 Penalties and forfeitures for nonpayment of special tax.
26 U. S. C. 3254 Definitions.
26 U. S. C. 3255 Liability in case of business in more than one location.
26 U. S. C. 3270 Registration.
26 U. S. C. 3271 Payment of tax.
26 U. S. C. 3272 Returns.
26 U. S. C. 3273 Stamps [Special Tax].
26 U. S. C. 3274 Penalties relating to posting of special tax stamp.
26 U. S. C. 3276 Application of State laws.
26 U. S. C. 3277 Liability of partners.
26 U. S. C. 3278 Liability in case of business in more than one location.
26 U. S. C. 3279 Liability in case of different businesses of same ownership and location.
26 U. S. C. 3280 Liability in case of death or change of location.
26 U. S. C. 3300 Establishment and alteration [Stamps, marks, and brands].
26 U. S. C. 3301 Attachment and cancellation.
26 U. S. C. 3303 Cancellation of stamps by perforation.
26 U. S. C. 3304 Redemption of stamps.
26 U. S. C. 3310 Returns and payment of tax.
26 U. S. C. 3634 Extension of time for filing returns.
26 U. S. C. 3640 Assessment authority.
26 U. S. C. 3656 Payment by check and money orders.
26 U. S. C. 3791 Rules and regulations.
26 U. S. C. 3609 Verification of returns; penalties of perjury.

REGULATIONS RELATING TO THE MANUFACTURE AND TAXPAYMENT OF FERMENTED MALT LIQUORS

SUBPART A—SCOPE OF REGULATIONS

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192.1 Fermented liquors.

SUBPART B—DEFINITIONS

192.10 Meaning of terms.
192.11 Brewer.
192.12 Brewery premises.
192.13 Brewing.
192.14 Business day.
192.15 Collector.
192.16 Commissioner.
192.17 District supervisor or supervisor.
192.18 Fermented liquor or beer.
192.19 Gallon.
192.20 Including.
192.21 Inclusive language.
192.22 I. R. C.
192.23 Person.
192.24 U. S. C.

SUBPART C—LOCATION AND USE OF BREWERY PREMISES

192.30 Restrictions.
192.31 Use of brewery premises.
192.32 Use of brewery bottling house.
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192.45 Pipe lines.
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192.60 Tanks and vats.
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AUTHORITY: §§ 192.1 to 192.467 issued under 5 U. S. C. 22; Sec. 161, R. S.; 53 Stat. 375, 467; 26 U. S. C. 3176, 3791. Interpret or apply 53 Stat. 373, as amended; 26 U. S. C. 3170. Other statutory provisions interpreted or applied are cited to text in parentheses.

DERIVATION: §§ 192.1 to 192.467 are derived from Regulations 18, 1940 edition (26 CFR, Part 192; 5 F. R. 1919) except as noted following sections affected.

## LAWS RELATING TO THE PRODUCTION AND SALE OF FERMENTED MALT LIQUORS [1]

5 U. S. C. 22; 161 R. S. DEPARTMENTAL REGULATIONS. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers and property appertaining to it.

19 U. S. C. 1309; 46 Stat. 690 as amended. SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT (WITHDRAWAL FREE OF TAX) (Sec. 309 (a), Tariff Act of 1930, as amended). *Exemption from customs duties and internal-revenue tax.* Articles of foreign or domestic manufacture or production may, under such regulations as the Secretary of the Treasury may prescribe, be withdrawn from bonded warehouses, bonded manufacturing warehouses, or continuous customs custody elsewhere than in a bonded warehouse free of duty or internal-revenue tax, or from any internal revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal revenue tax for supplies (not including equipment) of vessels of war, in ports of the United States, of any nation which may reciprocate such privilege toward the vessels of war of the United States in its ports, or for supplies (not including equipment) of vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or for supplies (not including equipment) of aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or for supplies (including equipment), maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted. (As amended by Sec. 3, Act of July 22, 1941 (Public Law 187, 77th Congress).)

(b) *Drawback.* Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, or continuous customs custody elsewhere than in a bonded warehouse and articles of domestic manufacture or production, laden as supplies upon any such foreign vessel or any such vessel or aircraft of the United States or laden as supplies (including equipment) upon, or used in the maintenance or repair of, any such foreign aircraft, shall be considered to be exported within the meaning of the drawback provisions of this chapter.

(c) *Articles removed in, or returned to, the United States.* Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 1317 of this title (Title 19, U. S. C.) and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

(d) *Reciprocal privileges.* The privileges granted by this section and section 1317 of this title in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 1317 shall not apply thereafter in respect of aircraft registered in that foreign country. (June 17, 1930, sec. 309, 46 Stat. 690; June 25, 1938, sec. 5 (a), 52 Stat. 1080)

26 U. S. C. 1650 WAR TAX RATES OF CERTAIN MISCELLANEOUS TAXES. In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period beginning with the effective date of Title III of the Revenue Act of 1943 shall be the rates set forth under the heading "War Tax Rate";

| Section | Description of tax | Old rate | War tax rate |
|---|---|---|---|
| 3150 | Fermented malt liquors | *Per barrel* $7 | *Per barrel* $8 |

26 U. S. C. 2815 CONDITIONS OF APPROVAL OF DISTILLER'S BOND—

* * * * *

(c) *Approval as condition to commencing business.* No individual, firm, partnership, corporation, or association, intending to commence or to continue the business of a distiller, rectifier, brewer, or winemaker, shall commence or continue the business of a distiller, rectifier, brewer, or winemaker until all bonds in respect of such a business, required by any provision of law, have been approved by the Commissioner or such other officer of the Bureau of Internal Revenue as the Commissioner, with the approval of the Secretary, may designate.

(d) *Disapproval.* The Commissioner or the designated officer may disapprove any such bond or bonds if the individual, firm, partnership, corporation or association giving the same, or owning, controlling, or actively participating in the management of the business of the individual or firm, partnership, corporation, or association giving the same, shall have been previously convicted, in a court of competent jurisdiction, of (1) any fraudulent noncompliance with any provision of any law of the United States if such provision related to internal-revenue or customs taxation of distilled spirits, wines, or fermented malt liquors, or if such an offense shall have been compromised with the individual, firm, partnership, corporation, or association upon payment of penalties or otherwise, or (2) any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, fermented malt liquor, or other intoxicating liquor.

(e) *Appeal from disapproval.* In case the disapproval is by any officer other than the Commissioner, the individual, firm, partnership, corporation, or association giving the bond may appeal from such disapproval to the Commissioner.

The disapproval of the Commissioner in any matter under this section shall be final.

(f) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 2829 INSTALLATION OF METERS, TANKS, AND OTHER APPARATUS. (a) *Power of the Commissioner.* The Commissioner, with the approval of the Secretary, is authorized to require at distilleries, breweries, rectifying houses, and wherever else in his judgment such action may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person on whose premises the installation is required. Any such person refusing or neglecting to install such apparatus when so required by the Commissioner shall not be permitted to conduct business on such premises.

* * * * *

26 U. S. C. 3104 WITHDRAWAL OF FERMENTED LIQUORS TO INDUSTRIAL ALCOHOL PLANTS. (a) *Requirements.* Fermented liquors may be conveyed without payment of tax from the brewery premises where produced to a contiguous industrial alcohol plant, to be used as distilling material, and the residue from such distillation, containing less than one-half of 1 per centum of alcohol by volume, which is to be used in making beverages, may be manipulated by cooling, flavoring, carbonating, settling, and filtering on the distillery premises or elsewhere.

The removal of the taxable fermented liquor from the brewery to the distillery and the operation of the distillery and removal of the residue therefrom shall be under the supervision of such officer or officers as the Commissioner shall deem proper, and the Commissioner, with the approval of the Secretary, is hereby authorized to make such regulations from time to time as may be necessary to give force and effect to this section and to safeguard the revenue.

* * * * *

26 U. S. C. 3150 TAX—(a) *Rate.* There shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half of 1 per centum, or more, of alcohol brewed or manufactured and sold, or removed for consumption or sale, within the United States, or imported into the United States, by whatever name such liquors may be called, a tax of $7 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. Imported fermented malt liquors shall during the continuance of the war-tax rate on fermented malt liquors prescribed in

[1] The sections of the United States Code are numbered identically with corresponding sections of the Internal Revenue Code.

section 1650, be subject to tax at such rate in lieu of the rate hereinbefore prescribed. In estimating and computing such tax, the fractional parts of a barrel shall be halves, thirds, quarters, sixths, and eighths; and any fractional part of a barrel, containing less than one-eighth, shall be accounted one-eighth; more than one-eighth, and not more than one-sixth, shall be accounted one-sixth; more than one-sixth, and not more than one-fourth, shall be accounted one-fourth; more than one-fourth, and not more than one-third, shall be accounted one-third; more than one-third, and not more than one-half, shall be accounted one-half; more than one-half, and not more than one barrel, shall be accounted one barrel; and more than one barrel, and not more than sixty-three gallons, shall be accounted two barrels, or a hogshead.

The provisions of this section requiring the accounting of hogsheads, barrels, and fractional parts of barrels at the next higher quantity shall not apply where the contents of such hogsheads, barrels, or fractional parts of barrels are within the limits of tolerance established by the Commissioner by regulations which he is hereby authorized to prescribe with the approval of the Secretary; and no assessment shall be made and no tax shall be collected for any excess in any case where the contents of the hogsheads, barrels, or fractional parts of barrels heretofore or hereafter used are within the limits of the tolerance so prescribed.

(b) *Payment*—(1) *In general.* The said tax shall be paid by the owner, agent, or superintendent of the brewery or premises in which such fermented liquors are made, and in the manner and at the time hereinafter specified.

(2) *Method of payment.* The tax on fermented malt liquor brewed or manufactured and sold, or removed for consumption or sale, within the United States, shall be paid by stamp, under such rules and regulations, permits, bonds, records, and returns, and with the use of such tax-stamp machines or metering or other devices and apparatus, as the Commissioner with the approval of the Secretary shall prescribe.

(3) *Penalties.* Whoever manufactures, procures, possesses, uses or tampers with a tax-stamp machine which may be required under this section with intent to evade the internal-revenue tax imposed upon fermented malt liquors, and whoever, with intent to defraud, makes, alters, simulates, or counterfeits any stamp of the character imprinted by such stamp machine, or who procures, possesses, uses, or sells any forged, altered, counterfeited, or simulated tax stamp or any plate, die, or device intended for use in forging, altering, counterfeiting, or simulating any such stamp, or who otherwise violates the provisions of this section, or the regulations issued pursuant thereto, shall pay a penalty of $5,000 and shall be fined not more than $10,000 or be imprisoned not more than five years, or both, and any machine, device, equipment, or materials used in violation of this section shall be forfeited to the United States and after condemnation shall be destroyed. But this provision shall not exclude any other penalty or forfeiture provided by law.

(4) *Unfermented worts sold by one brewer to another.* When malt liquor or tun liquor, in the first stages of fermentation, known as unfermented worts, of whatever kind, is sold by one brewer to another for the purpose of producing fermentation or enlivening old or stale ale, porter, lager beer, or other fermented liquors, it shall not be liable to a tax to be paid by the seller thereof, but the tax on the same shall be paid by the purchaser thereof, when the same, having been mixed with the old or stale beer, is sold by him as provided by law, and such sale or transfer shall be subject to such restrictions and regulations as the Commissioner may prescribe.

(c) *Exemption of materials used in producing fermented or malt liquors.* Nothing contained in section 3155 (c) shall be so construed as to authorize an assessment upon the quantity of materials used in producing or purchased for the purpose of producing, fermented or malt liquors, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of liquor produced; but the tax on all beer, lager beer, ale, porter, or other similar fermented liquor, brewed or manufactured, and sold or removed for consumption or sale, shall be paid as provided in paragraph (1) of subsection (b), and not otherwise: *Provided,* That this subsection shall not apply to cases of fraud: *And provided further,* That nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

(d) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

* * * * *

26 U. S. C. 3152 OTHER PROVISIONS RELATING TO STAMPS—(a) *Affixing and canceling tax-paid stamps.* Every brewer shall affix, upon the spigot-hole in the head of every hogshead, barrel, or keg in which any fermented liquor is contained, when sold or removed from such brewery or warehouse (except in case of removal under permit, as hereinafter provided), a stamp denoting the amount of the tax required upon such fermented liquor, which stamp shall be destroyed by driving through the same the faucet through which the liquor is to be withdrawn, or an air-faucet of equal size, at the time the hogshead, barrel, or keg is tapped, in case it is tapped through the other spigot-hole (of which there shall be but two, one in the head and one in the side), and shall also, at the time of affixing such stamp, cancel the same by writing or imprinting thereon the name of the person, firm, or corporation by whom such liquor was made, or the initial letters thereof, and the date when canceled: *Provided, however,* That the Commissioner may, in his discretion, authorize the use of such other tapping devices or faucets as will permit the affixing and destruction of stamps in a manner consistent with the protection of the revenue.

(b) *Issue for restamping.* The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of fermented liquors which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(c) *Authority to discontinue export stamps.* The Commissioner, with the approval of the Secretary, is authorized to discontinue the use of export fermented-liquor stamps whenever in his judgment the interests of the Government will be subserved thereby.

(d) *General stamp provisions.* For general provisions relating to stamps, see subchapter A of chapter 28.

(e) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 3153 REMOVALS FREE OF TAX—(a) *From brewery to warehouse under permit.* Any brewer may remove or transport, or cause to be removed or transported, from his brewery or other place of manufacture to a depot, warehouse, or other place used exclusively for storage or sale in bulk, and occupied by him, in another part of the same collection district, or in another collection district, but to no other place, malt liquor of his own manufacture, known as lager beer, in quantities of not less than six barrels, and malt liquor of his own manufacture, known as ale or porter, or any other malt liquor of his own manufacture not heretofore mentioned, in quantities not less than fifty barrels at a time, without affixing the proper stamps on said vessels of lager beer, ale, porter, or other malt liquor, at the brewery or place of manufacture, under a permit, which shall be granted, upon application, by the collector of the district in which said malt liquor is manufactured, and under such regulations as the Commissioner may prescribe; and thereafter the manufacturer of said malt liquor shall stamp the same, when it leaves such depot or warehouse, in the same manner and under the same penalties and liabilities as when stamped at the brewery as provided in section 3152 (b).

And said permit must be affixed to every such vessel or cask so removed, and canceled or destroyed in such manner as the Commissioner may prescribe, and under the same penalties and liabilities as provided in section 3159 (d).

(b) *From brewery or warehouse for export.* Fermented liquor may be removed from the place of manufacture, or storage, for export to a foreign country, without payment of tax, in such packages and under such regulations, and upon the giving of such notices, entries, bonds, and other security, as the Commissioner, with the approval of the Secretary, may from time to time prescribe; and no drawback of tax shall be allowed on fermented liquor exported.

(c) *For manufacturing purposes when unfit for beverage use.* When fermented liquor has become sour or damaged, so as to be incapable of use as such, brewers may sell the same for manufacturing purposes, and may remove the same to places where it may be used for such purposes, in casks, or other vessels, unlike those ordinarily used for fermented liquors, containing respectively not less than one barrel each, and having the nature of their contents marked upon them, without affixing thereon the permit, stamp or stamps required.

(d) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 3155 REQUIREMENTS ON BREWERS—(a) *Notice of Business.* Every brewer shall, before commencing or continuing business, file with the officer designated for that purpose by the Commissioner a notice in writing and in the form prescribed by the Commissioner, with the approval of the Secretary. Such notice shall set forth (a) the name and residence of the brewer, and the names and residences of all such persons interested or to be interested in the business, directly or indirectly, as the Commissioner shall prescribe, (b) the precise place where the business is to be carried on, including a description of the premises on which the brewery is situated, the title of the brewer to the premises, and the name of the owner thereof, and (c) such additional particulars as the Commissioner shall prescribe as necessary for the protection of the revenue.

(b) *Bonds.* Every brewer, on filing notice as provided by law of his intention to commence or continue business, shall execute a bond to the United States in a penal sum equal to the amount of the tax on fermented malt liquor which, in the opinion of the Commissioner, said brewer will be liable to pay during any one month: *Provided,* That the penal sum of any such bond shall not exceed $100,000 nor be less than $1,000. The bond shall be conditioned that the brewer shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, lager beer, ale, porter, and other fermented liquors made by or for him, before the same is sold or removed for consumption or sale, except as hereinafter provided; and that he shall keep, or cause to be kept, in the manner required by law, a book which shall be open to inspection by the proper officers, as by law required; and that he shall in all respects faithfully comply,

without fraud or evasion, with all requirements of law relating to the manufacture and sale of any malt liquors aforesaid. Once in every four years, or whenever required so to do by the Commissioner, or such officer as may be designated by the Commissioner, the brewer shall execute a new bond in the penal sum prescribed in pursuance of this section, and conditioned as above provided, which bond shall be in lieu of any former bond or bonds of such brewer in respect to all liabilities accruing after its approval.

(c) *Books and monthly statement.* Every person who owns or occupies any brewery, or premises used or intended to be used for the purpose of brewing or making such fermented liquors, or who has such premises under his control or superintendence, as agent for the owner or occupant, or has in his possession or custody any brewing materials, utensils, or apparatus, used or intended to be used on said premises in the manufacture of beer, lager beer, ale, porter, or other similar fermented liquors, either as owner, agent, or superintendent, shall, from day to day, enter, or cause to be entered, in a book to be kept by him for that purpose, the kind of such malt liquors, the estimated quantity produced in barrels, and the actual quantity sold or removed for consumption or sale in barrels or fractional parts of barrels. He shall also, from day to day, enter, or cause to be entered, in a separate book to be kept by him for that purpose, an account of all materials by him purchased for the purpose of producing such fermented liquors, including grain and malt.

And he shall render to the collector, or the proper deputy collector, on or before the 10th day of each month, a true statement, in writing, in duplicate, taken from his books, of the estimated quantity in barrels of such malt liquors brewed, and the actual quantity sold or removed for consumption or sale during the preceding month; and shall verify, or cause to be verified, the said statement, and the facts therein set forth, by oath, to be taken before the collector of the district, or proper deputy collector, according to the form required by law.

Said books shall be open at all times for the inspection of any collector, deputy collector, inspector, or revenue agent, who may take memorandums and transcripts therefrom.

(d) *Monthly verification of entries in books.* The entries made in such books shall, on or before the 10th day of each month, be verified by the oath of the person by whom they are made. The said oath shall be written in the book at the end of such entries, and be certified by the officer administering the same, and shall be in form as follows:

"I do swear (or affirm) that the foregoing entries were made by me; and that they state truly, according to the best of my knowledge and belief, the estimated quantity of the whole amount of such malt liquors brewed, and the actual quantity sold, and the actual quantity removed, from the brewery owned by _____, in the county of _____; and, further, that I have no knowledge of any matter or thing required by law to be stated in said entries which has been omitted therefrom."

And the owner, agent, or superintendent aforesaid shall also, in case the original entries made in his book were not made by himself, subjoin thereto the following oath, to be taken in manner as aforesaid.

"I do swear (or affirm) that, to the best of my knowledge and belief, the foregoing entries fully set forth all the matters therein required by law; and that the same are just and true; and that I have taken all the means in my power to make them so."

(e) *Stamping and monthly report of retail sales.* Every brewer who sells fermented liquor at retail at the brewery or other place where the same is made, shall affix and cancel the proper stamps upon the hogsheads, barrels, or kegs in which the same is contained, and shall keep an account of the quantity so sold by him, and of the number and size of the hogsheads, barrels, or kegs in which the same has been contained, and shall make a report thereof, verified by oath, monthly to the collector.

(f) *Branding name of manufacturer and place of manufacture on containers.* Every brewer shall, by branding, mark or cause to be marked upon every hogshead, barrel, or keg containing the fermented liquor made by him, before it is sold or removed from the brewery or brewery warehouse, or other place of manufacture, the name of the person, firm, or corporation by whom such liquor was manufactured, and the place of manufacture; and every person other than the owner thereof, or his agent authorized so to do, who intentionally removes or defaces such marks therefrom, shall be liable to a penalty of $50 for each cask or other vessel from which the mark is so removed or defaced: *Provided,* That when a brewer purchases fermented liquor finished and ready for sale from another brewer, in order to supply the customers of such purchaser, the purchaser may, upon written notice to the collector of his intention so to do, and under such regulations as the Commissioner may prescribe, furnish his own vessels, branded with his name and the place where his brewery is situated, to be filled with the fermented liquor so purchased, and to be so removed; the proper stamps to be affixed and canceled, as aforesaid, by the manufacturer before removal.

(g) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 3156 PERMIT TO OPERATE BREWERY TEMPORARILY AT ANOTHER PLACE—(a) *Requirements.* Whenever, in the opinion of the collector of any district, it becomes requisite or proper, by reason of an accident, to any brewery therein by fire or flood, or of such brewery undergoing repairs, or of other circumstances, that the brewer carrying on the same shall be permitted to conduct his business wholly or in part at some other place within such district or an adjoining district for a temporary period, it shall be lawful for such collector, under such regulations and subject to such limitation of time as the Commissioner may prescribe, to issue a permit to such brewer, authorizing him to conduct his business wholly or in part, according to the circumstances, at such other place, for a period to be stated in such permit; and such brewer shall not be required to pay another special tax for the purpose.

(b) *Transfer of duties.*—For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 3157 BOTTLING FERMENTED LIQUORS—(a) *Requirements.* Every person who withdraws any fermented malt liquor from any hogshead, barrel, or keg upon which the proper stamp has not been affixed for the purpose of bottling the same, or who carries on or attempts to carry on the business of bottling fermented malt liquor in any brewery or other place in which fermented malt liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of $500, and the property used in such bottling or business shall be liable to forfeiture: *Provided, however,* That this section shall not be construed to prevent the transfer of any unfermented, partially fermented, or fermented malt liquors from any of the vats or tanks in any brewery by way of a pipe line or other conduit to another building or place on the brewery premises for the sole purpose of bottling the same, such pipe line or conduit to be constructed and operated in such manner and with such cisterns, vats, tanks, valves, cocks, faucets, meters, and gages, or other utensils or apparatus, either in the brewery or in the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner, subject to the approval of the Secretary: *Provided further,* That the tax imposed by law on fermented malt liquor shall be paid on all bottled fermented malt liquor at the time of removal for consumption or sale, in such manner as may be prescribed by regulations pursuant to section 3150 (b) (2). And any violation of the rules and regulations prescribed by the Commissioner, with the approval of the Secretary, in pursuance of these provisions shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house who removes, or connives at the removal of, any fermented malt liquor through a pipe line or conduit, with the intent to defraud the revenue, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same.

(b) *Rules and regulations.* The Commissioner is hereby authorized, with the approval of the Secretary, to make all rules and regulations necessary to carry out the provisions of this section.

(c) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 3158 BREWERY PREMISES. The brewery premises shall consist of the land and buildings described in the brewer's notice and shall be used solely for the purpose of manufacturing beer, lager beer, ale, porter, and similar fermented malt liquors, cereal beverages containing less than one-half of 1 per centum of alcohol by volume, vitamins, ice, malt, malt sirup, and other by-products; of bottling fermented malt liquors and cereal beverages as hereinafter provided; of drying spent grain from the brewery; of recovering carbon dioxide and yeast; and of storing bottles, packages, and supplies necessary or incidental to all such manufacture: *Provided,* That undelivered tax-paid fermented malt liquor in stamped barrels or kegs returned to a brewery may be temporarily stored therein, subject to such conditions and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe. The bottling of fermented malt liquors and cereal beverages on the brewery premises shall be conducted only in the brewery bottling house which shall be located on such premises. The brewery bottling house shall be separated from the brewery in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. The brewery bottling house shall be used solely for the purpose of bottling beer, lager beer, ale, porter, and similar fermented malt liquors, and cereal beverages containing less than one-half of 1 per centum of alcohol by volume; and for the storage of bottles, tools, and supplies necessary or incidental to the manufacture or bottling of fermented malt liquor and cereal beverages. Notwithstanding the foregoing provisions, where any such brewery premises or brewery bottling house was, on June 26, 1936, being used by any brewer for purposes other than those herein described, or the brewery bottling house was, on such date, being used for the bottling of soft drinks, the use of the brewery and bottling-house premises for such purposes may be continued by such brewer. The brewery bottling house of any brewery shall not be used for the bottling of the product of any other brewery. Any brewer who uses his brewery or bottling house contrary to the provisions of this subsection shall be fined not more than $50 with respect to each day upon which any such use occurs.

26 U. S. C. 3159 PENALTIES AND FORFEITURES—(a) *Evasion of tax or noncompliance with requirements on brewers.* Every owner, agent, or superintendent of any brewery, vessels, or utensils used in making fermented

liquors, who evades or attempts to evade the payment of the tax thereon, or fraudulently neglects or refuses to make true and exact entry and report of the same in the manner required by law, or to do, or cause to be done, any of the things by law required to be done by him, or who intentionally makes false entry in said book or in said statement, or knowingly allows or procures the same to be done, shall—

(1) *Forfeitures.* Forfeit, for every such offense, all the liquors made by him or for him, and all the vessels, utensils, and apparatus used in making the same, and

(2) *Penalties.* Be liable to a penalty of not less than $500 nor more than $1,000, to be recovered with costs of suit, and shall be deemed guilty of a misdemeanor, and be imprisoned for a term not exceeding one year.

(b) *Neglect to keep books or furnish accounts.* Every brewer who neglects to keep books or refuses to furnish the account and duplicate thereof as provided by law, or refuses to permit the proper officer to examine the books in the manner provided, shall, for every such refusal or neglect, forfeit and pay the sum of $300.

(c) *Flagrant and willful removal of malt liquors without tax payment.* For flagrant and willful removal of taxable malt liquors for consumption or sale, without payment of tax thereon, all the right, title, and interest of each person, who has knowingly suffered or permitted such removal or has connived at the same, in the lands and buildings constituting the brewery premises and bottling house shall be forfeited by a proceeding in rem in the District Court of the United States having jurisdiction thereof.

(d) *Fraud or neglect in affixing or canceling stamps.* Every brewer who refuses or neglects to affix and cancel, in the manner provided under section 3152, the stamps required by law, or who affixes a false or fraudulent stamp, or knowingly permits the same to be done, shall pay a penalty of $100 for each hogshead, barrel, or keg on which such omission or fraud occurs, and be imprisoned not more than one year.

(e) *Sale, removal, or receipt without proper stamp or permit.* Whenever any brewer, cartman, agent for transportation, or other person, sells, removes, receives, or purchases, or in any way aids in the sale, removal, receipt, or purchase, of any fermented liquor contained in any hogshead, barrel, keg, or other vessel from any brewery or brewery warehouse, upon which the stamp, or permit, in case of removal, required by law, has not been affixed, or on which a false or fraudulent stamp, or permit, in case of removal, is affixed, with knowledge that it is such, or on which a stamp, or permit, in case of removal, once canceled, is used a second time, he shall be fined $100 and imprisoned for not more than one year.

(f) *Withdrawal from improperly stamped containers or without destroying stamps, penalty.* Whenever any retail dealer, or other person, withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel containing the same, without destroying or defacing the stamp affixed thereon, or withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel, upon which the proper stamp has not been affixed or on which a false or fraudulent stamp is affixed, he shall be fined $100 and imprisoned not more than one year.

(g) *Counterfeiting stamps, and permits and trafficking in used stamps, penalty.* Every person who makes, sells, or uses any false or counterfeit stamp or permit, or die for printing or making stamps or permits, which is in imitation of or purports to be a lawful stamp, permit, or die of the kind before mentioned in this chapter, or who procures the same to be done, and every person who shall remove, or cause to be removed, from any cask or package of fermented liquors, any stamp denoting the tax thereon, with intent to reuse such stamp, or who, with intent to defraud the revenue, knowingly uses, or permits to be used, any stamp removed from another cask or package, or receives, buys, sells, gives away, or has in his possession, any stamp so removed, or makes any fraudulent use of any stamp for fermented liquors, shall be fined not less than $100 nor more than $1,000, and imprisoned not less than six months nor more than three years.

(h) *Possession with tax not paid, forfeiture.* The ownership or possession by any person of any fermented liquor after its sale or removal from the brewery or warehouse, or other place where it was made, upon which the tax required has not been paid, shall render such liquor liable to seizure wherever found, and to forfeiture, removal under said permits excepted.

And the absence of the proper stamps from any hogshead, barrel, keg, or other vessel containing fermented liquor, after its sale or removal from the brewery where it was made, or warehouse as aforesaid, shall be notice to all persons that the tax has not been paid thereon, and shall be prima facie evidence of the nonpayment thereof.

(i) *Removal or defacement of stamps by others than the owner.* Every person, other than the purchaser or owner of any fermented liquor, or person acting on his behalf, or as his agent, who intentionally removes or defaces the stamp or permit affixed upon the hogshead, barrel, keg, or other vessel, in which the same is contained, shall be liable to a fine of $50 for each such vessel from which the stamp or permit is so removed or defaced, and to render compensation to such purchaser or owner for all damages sustained by him therefrom.

(j) *Fraudulent removal of bottled fermented malt liquors.* Any brewer or other person who removes or in any way aids in the removal from any brewery or brewery bottling house of any bottled fermented malt liquors on which the required tax has not been paid shall be fined $100 and imprisoned for not more than one year.

(k) *Intentional removal or defacement of manufacturer's marks on containers.* For penalty imposed for intentional removal or defacement of manufacturer's marks required upon a hogshead, barrel, keg, or other vessel containing fermented liquor, see section 3155 (f).

(l) *Violations of provisions relating to bottling.* For penalties and forfeitures imposed for violating provisions relating to bottling of fermented liquors, see section 3157.

(m) *Other violations.* For penalty and forfeiture imposed upon wholesale liquor dealers for committing offenses not specifically covered by law, see section 2806 (g).

26 U. S. C. 3160 GALLON DEFINED. The word "gallon," wherever used in the internal revenue law, relating to beer, lager beer, ale, porter, and other similar fermented liquors, shall be held and taken to mean a wine gallon, the liquid measure containing two hundred and thirty-one cubic inches.

26 U. S. C. 3170 TRANSFER AND DELEGATION OF POWERS. The Secretary is authorized to confer and impose upon the Commissioner and any of his assistants, agents, or employees, and upon any other officer, employee, or agent of the Treasury Department, any of the rights, privileges, power, duties, and protection conferred or imposed upon the Secretary, or any officer or employee of the Treasury Department, by any law now or hereafter in force relating to the taxation, exportation, transportation, manufacture, possession, or use of, or traffic in, distilled spirits, wine, fermented liquors, or denatured alcohol.

26 U. S. C. 3171 RECORDS, STATEMENTS, AND RETURNS—(a) *Requirements.* Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 3176 RULES AND REGULATIONS—(a) *Power of Commissioner.* The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

(b) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 3250 TAX—(a) *Wholesale dealers in liquors*—(1) *In general.* Wholesale dealers in liquors shall pay a special tax of $110.

(2) *Wholesale dealers in liquors dealing in wines or wines and malt liquors.* For the designation of wholesale dealers in liquors as wholesale dealers in wines or wholesale dealers in wines and malt liquors, and the issuance of the appropriate special tax stamps, see section 3254 (b).

(3) *Retailers selling at wholesale.* Except as provided in section 3254 (c) (2), a qualified retail dealer in liquors may not sell distilled spirits, wines, or malt liquors in quantities of five wine-gallons or more to the same person at the same time without incurring liability to special tax as a wholesale dealer in liquors.

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(5) *Retail dealers in liquidation.* For exemption of retailers liquidating entire stock from payment of special tax as wholesalers, see section 3251 (c).

(6) *Creditors, fiduciaries, officers of court, and partners.* For exemption of creditors, fiduciaries, officers of court, and partners from the payment of any special tax by reason of casual sales, see section 3251 (a) and (b).

(b) *Retail dealers in liquors*—(1) *In general.* Except as provided in paragraph (3) of subsection (e), retail dealers in liquors shall pay a special tax of $27.50.

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(3) *Retail dealers in liquors dealing in wines or wines and malt liquors.* For the designation of retail dealers in liquors as retail dealers in wines and malt liquors, and the issuance of appropriate special tax stamps, see section 3254 (c) (1).

(4) *Wholesalers selling at retail.* A qualified wholesale dealer in liquors may not sell distilled spirits, wines, or malt liquors in quantities of less than five wine gallons without incurring liability to special tax as a retail dealer in liquors.

(5) *Creditors, fiduciaries, officers of court, and partners.* For exemption of creditors, fiduciaries, officers of court, and partners from the payment of any special tax by reason of casual sales, see section 3251 (a) and (b).

(c) *Brewers*—(1) *In general.* Brewers shall pay $110 in respect of each brewery: *Provided,* That any brewer of less than 500 barrels a year shall pay the sum of $55.

(2) *Cross reference.* For effect upon special tax of purchases or sales of malt liquors by brewers, see paragraph (3) of subsection (d).

(d) *Wholesale dealers in malt liquors*—(1) *In general.* Wholesale dealers in malt liquors shall pay a special tax of $55.

(2) *Retailers selling at wholesale.* A qualified retail dealer in malt liquors may not sell such liquors in quantities of five gallons or more to the same person at the same time without incurring liability to special tax as a wholesale dealer in malt liquors. No retail dealer in malt liquors shall be held to be a wholesale dealer in malt liquors solely

by reason of sales of five gallons or more to the same person at the same time if such sales are for immediate consumption on the premises where sold.

(3) *Brewers selling at wholesale.* No brewer shall be obliged to pay special tax as a dealer by reason of selling in the original stamped hogsheads, barrels, or kegs, whether at the place of manufacture or elsewhere, malt liquors manufactured by him, or purchased and procured by him in his own hogsheads, barrels, or kegs, under provisions of section 3155 (f), but the quantity of malt liquors so purchased shall be included in calculating the liability to brewers' special tax of both the brewer who manufactures and sells the same and the brewer who purchases the same.

(4) *Retail dealers in liquidation.* For exemption of retailers liquidating entire stock from payment of special tax as wholesalers, see section 3251 (c).

(e) *Retail dealers in malt liquors*—(1) *In general.* Retail dealers in malt liquors shall pay a special tax of $22.

(2) *Wholesalers selling at retail.* A qualified wholesale dealer in malt liquors may not sell such liquors in quantities of less than five gallons without incurring liability to special tax as a retail dealer in malt liquors.

(3) *Persons selling to entertainments and outings.* Notwithstanding the provisions of this part, each person making sales of fermented malt liquor or wine to the members, guests, or patrons of bona-fide fairs, reunions, picnics, carnivals, or other similar outings, and each fraternal, civic, church, labor, charitable, benevolent, or ex-service men's organization making sales of fermented malt liquor or wine on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, if such person or organization is not otherwise engaged in business as a wholesale or retail liquor dealer or as a wholesale or retail malt liquor dealer, shall pay, before any such sales are made and in lieu of the special taxes imposed by paragraph (1) of this subsection and of subsection (b) a special tax of $2.20 as a retail dealer in malt liquors, if fermented malt liquor only is sold, or a special tax of $2.20 as a retail dealer in liquors if wine only, or wine and fermented malt liquor only, are sold for each calendar month in which any such sales are made.

(4) *Brewers selling at retail.* No collection of special tax as a retail dealer in malt liquors shall be made from brewers for selling malt liquors of their own manufacture in the original stamped eight-barrel packages.

(5) *Other provisions.* For other provisions relating to brewers as dealers, see paragraph (3) of subsection (d).

(6) *Transfer of duties.* For transfer of powers and duties of the Commissioner and his agents, see section 3170.

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26 U. S. C. 3251 CASUAL SALES—(a) *By creditors, fiduciaries, and officers of court.* No special tax shall be held to accrue on a sale of distilled spirits, wines, or malt liquors made by a person who is not otherwise a dealer in liquors, where such spirits, wines, or liquors have been received by the person so selling as security for or in payment of a debt, or as executor, administrator, or other fiduciary, or have been levied on by any officer, under order or process of any court or magistrate, and where such spirits are sold by such person in one parcel only, or at public auction in parcels not less than twenty wine-gallons.

(b) *By retiring or deceased partners to incoming or remaining partners.* No special tax shall be held to accrue on a sale of distilled spirits, wines, or malt liquors made by a retiring partner, or the representatives of a deceased partner to the incoming, remaining, or surviving partner or partners of a firm.

(c) *By retail dealers in liquidation.* The special tax of a wholesale dealer in liquors or wholesale dealer in malt liquors shall not be held to apply to a retail dealer in liquors or a retail dealer in malt liquors, because of such retail dealer selling out his entire stock of liquors in one parcel, or in parcels embracing not less than his entire stock of distilled spirits, of wines, or of malt liquors. Section 2860 shall not be held to prohibit a rectifier or liquor dealer from purchasing, in quantities greater than twenty wine-gallons, the distilled spirits sold in one parcel as aforesaid.

26 U. S. C. 3253 PENALTIES AND FORFEITURES FOR NONPAYMENT OF SPECIAL TAX. Any person who shall carry on the business of a brewer, rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, and willfully fails to pay the special tax as required by law, shall, for every such offense, be fined not less than $100 nor more than $5,000 and be imprisoned for not less than thirty days nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in any building, room, yard, or enclosure connected therewith and used with or constituting a part of the premises, shall be forfeited to the United States.

26 U. S. C. 3254 DEFINITIONS.

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(b) *Wholesale dealer in liquors.* Except as otherwise provided, every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors in quantities of five wine-gallons or more to the same person at the same time, shall be regarded as a wholesale dealer in liquors: *Provided,* That the Commissioner may, by regulations, with the approval of the Secretary, provide for the issuance of a stamp denoting payment of such special tax as a "wholesale dealer in wines" or a "wholesale dealer in wines and malt liquors" if, as the case may be, wines only, or wines and malt liquors only, are sold by a wholesale dealer in liquors.

(c) *Retail dealer in liquors.* Except as otherwise provided, (1) every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors in less quantities than five wine-gallons to the same person at the same time, shall be regarded as a retail dealer in liquors: *Provided,* That the Commissioner may, by regulations, with the approval of the Secretary, provide for the issuance of a stamp denoting payment of such special tax as a "retail dealer in wines" or a "retail dealer in wines and malt liquors" if, as the case may be, wines only, or wines and malt liquors only, are sold by a retail dealer in liquors.

(2) No retail dealer in liquors shall be held to be a wholesale dealer in liquors solely by reason of sales of five wine-gallons or more to the same person at the same time if such sales are for immediate consumption on the premises where sold.

(d) *Brewer.* Every person who manufactures fermented liquors of any name or description, for sale, from malt, wholly or in part, or from any substitute therefor, shall be deemed a brewer.

(e) *Wholesale dealers in malt liquors.* Except as otherwise provided, every person who sells, or offers for sale, malt liquors in quantities of five gallons or more, to the same person at the same time, and who does not deal in distilled spirits or wines at wholesale, shall be regarded as a wholesale dealer in malt liquors.

(f) *Retail dealer in malt liquors.* Except as otherwise provided, every person who sells, or offers for sale, malt liquors in less quantities than five gallons to the same person at the same time, and does not deal in distilled spirits or wines, shall be regarded as a retail dealer in malt liquors.

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26 U. S. C. 3255 LIABILITY IN CASE OF BUSINESS IN MORE THAN ONE LOCATION—(a) *Retail dealers in liquors or malt liquors.* Any retail dealer in liquors or retail dealer in malt liquors whose business is such as to require him to travel from place to place in different States of the United States may, under regulations prescribed by the Commissioner, with the approval of the Secretary, procure a special-tax stamp "At Large" covering his activities throughout the United States with the payment of but one special tax as a retail dealer in liquors or as a retail dealer in malt liquors, as the case may be.

(b) *Dealers in liquors or malt liquors.* Nothing contained in this chapter shall prevent the issue, under such regulations as the Commissioner may prescribe, of special tax stamps to persons carrying on the business of retail dealers in liquors, or retail dealers in malt liquors, upon passenger railroad trains or upon steamboats or other vessels engaged in the business of carrying passengers.

(c) *Dealers in liquors or malt liquors making sales on purchaser dealers' premises.* No wholesale or retail dealer in liquors or wholesale or retail dealer in malt liquors who has paid the special tax as such a dealer shall again be required to pay special tax as such dealer on account of sales of beer, lager beer, ale, porter, or other similar fermented malt liquor to wholesale or retail dealers in liquors or wholesale or retail dealers in malt liquors consummated at the purchaser's place of business covered by the stamp issued to him to denote the payment of the special tax imposed upon such dealers.

26 U. S. C. 3270 REGISTRATION—(a) *Requirements.* Every person engaged in any trade or business on which a special tax is imposed by law shall register with the collector of the district his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

(b) *Cross references.*

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For transfer of powers and duties of Commissioner and his agents in case of liquor see section 3170.

26 U. S. C. 3271 PAYMENT OF TAX—(a) *Condition precedent to doing business.* No person shall be engaged in or carry on any trade or business mentioned in this chapter until he has paid a special tax therefor in the manner provided in this chapter.

(b) *Due date.* All special taxes shall become due on the 1st day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year, and in the latter case it shall be reckoned proportionately, from the 1st day of the month in which the liability to a special tax comenced, to and including the 30th day of June following.

(c) *How paid*—(1) *Stamp.* All special taxes imposed by law, including the tax on stills or worms, shall be paid by stamps denoting the tax.

(2) *Assessment.* For authority of Commissioner to make assessments where the special taxes have not been duly paid by stamp, at the time and in the manner provided by law, see section 3640.

26 U. S. C. 3272 RETURNS—(a) *Time for filing.* It shall be the duty of the special taxpayers to render their returns with remittances to the collector at such times within the calendar month in which the special tax liability commenced as shall enable him to receive such returns, duly signed and veri-

fied, together with the remittances, not later than the last day of the month, except in cases of sickness or absence, as provided for in section 3634.

(b) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents in case of narcotics and liquor, see subchapter D of chapter 23 and section 3170.

(c) *Penalties.* For penalties imposed for failure to file returns or for making false or fradulent returns, see section 3612.

26 U. S. C. 3273 STAMPS—(a) *Supply.* The Commissioner is required to procure appropriate stamps for the payment of all special taxes imposed by law, including the tax on stills or worms; and the provisions of section 2802 (a) and of sections 3300, 3301, and 3302, and all other provisions of law relating to the preparation and issue of stamps for distilled spirits, fermented liquors, tobacco, and cigars, shall, so far as applicable, extend to and include such stamps for special taxes; and the Commissioner shall have authority to make all needful regulations relative thereto.

(b) *Posting.* Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, shall place and keep conspicuously in his establishment or place of business all stamps denoting the payment of said special tax.

(c) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see subchapter D of chapter 23 and section 3170.

26 U. S. C. 3274 PENALTIES RELATING TO POSTING OF SPECIAL TAX STAMP. Any person who shall, through negligence, fail to place and keep stamps denoting the payment of the special tax as provided in section 3273 (b) shall be liable to a penalty equal to the special tax for which his business rendered him liable, and the costs of prosecution; but in no case shall said penalty be less than $10. And where the failure to comply with the provisions of section 3273 (b) shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed: *Provided,* That nothing in this section shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof.

26 U. S. C. 3276 APPLICATION OF STATE LAWS. The payment of any tax imposed by the internal revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

26 U. S. C. 3277 LIABILITY OF PARTNERS. Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

26 U. S. C. 3278 LIABILITY IN CASE OF BUSINESS IN MORE THAN ONE LOCATION. The payment of the special tax imposed shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the collector's register; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as provided in this chapter for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

26 U. S. C. 3279 LIABILITY IN CASE OF DIFFERENT BUSINESSES OF SAME OWNERSHIP AND LOCATION. Whenever more than one of the pursuits or occupations described in this chapter are carried on in the same place by the same person at the same time, except as otherwise provided in this chapter the tax shall be paid for each according to the rates severally prescribed.

26 U. S. C. 3280 LIABILITY IN CASE OF DEATH OR CHANGE OF LOCATION—(a) *Requirements.* When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. And when any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the collector's register at the place to which he removes, without the payment of any additional tax: *Provided,* That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the collector, under regulations to be prescribed by the Commissioner.

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(c) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, in case of liquor, see section 3170.

26 U. S. C. 3300 ESTABLISHMENT AND ALTERATION, [STAMPS, MARKS, AND BRANDS]—(a) *Authorization.* The Commissioner, with the approval of the Secretary, may establish and, from time to time, alter or change the form, style, character, material, and device of any stamp, mark, or label used under any provision of the laws relating to internal revenue.

(b) *Application of penalty and forfeiture provisions.* All pains, penalties, fines, and forfeitures provided by law relating to internal revenue stamps shall apply to and have full force and effect in relation to any and all stamps so established by the Commissioner.

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26 U. S. C. 3301 ATTACHMENT AND CANCELLATION—(a) *General authority to prescribe methods and instruments.* The stamps referred to in the preceding section shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Commissioner, with the approval of the Secretary, may prescribe; and he is authorized and empowered to make, with the approval of the Secretary, all needful regulations relating thereto.

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26 U. S. C. 3303 CANCELLATION OF STAMPS BY PERFORATION. In lieu of or in addition to other requirements of law in that respect, all stamps used for denoting internal revenue taxes may, in the discretion of the Commissioner, be canceled by perforations to be made in such manner and form as the Commissioner may, by regulation, prescribe.

26 U. S. C. 3304 REDEMPTION OF STAMPS—(a) *Authorization.* The Commissioner, subject to regulations prescribed by the Secretary, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

(b) *Method and conditions of allowance.* Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the said Commissioner, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

(c) *Time for filing claims.* No claim for the redemption of or allowance for stamps shall be allowed unless presented within four years after the purchase of such stamps from the Government.

(d) *Finality of Commissioner's decisions.* The finding of facts in and the decision of the Commissioner upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

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26 U. S. C. 3310 RETURNS AND PAYMENT OF TAX—(a) *Monthly returns.* All returns required to be made monthly by any person liable to tax shall be made on or before the 10th day of each month, and the tax assessed or due thereon shall be returned by the Commissioner to the collector on or before the last day of each month.

(b) *Other returns.* All returns for which no provision is otherwise made shall be made on or before the 10th day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made.

(c) *Addition to tax in case of nonpayment.* When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of 5 per centum, together with interest at the rate of 6 per centum per annum, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: *Provided,* That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner.

(d) *Demand for tax, penalty, and interest.* It shall then be the duty of the collector, in case of the nonpayment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with 5 per centum added thereto, and interest at the rate of 6 per centum per annum, as aforesaid, in the manner prescribed by law; and

(e) *Distraint.* If said tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law.

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26 U. S. C. 3634 EXTENSION OF TIME FOR FILING RETURNS. If the failure to file a return (other than a return of income tax) or list at the time prescribed by law or by regulation made under authority of law is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

26 U. S. C. 3640 ASSESSMENT AUTHORITY. The Commissioner is authorized and required to make the inquiries, determina-

tions, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal revenue law, where such taxes have not been duly paid by stamp at the time and in the manner provided by law.

26 U. S. C. 3656 PAYMENT BY CHECK AND MONEY ORDERS—(a) *Certified, cashiers', and treasurers' checks and money orders*—(1) *Authority to receive.* It shall be lawful for collectors to receive for internal revenue taxes or in payment of stamps to be used in payment of internal revenue taxes certified, cashiers', and treasurers' checks drawn on National and State banks and trust companies, and United States postal, bank, express, and telegraph money orders, during such time and under such regulations as the Commissioner, with the approval of the Secretary, may prescribe.

(2) *Discharge of liability*—(A) *Check duly paid.* No person who may be indebted to the United States on account of internal revenue taxes or stamps used or to be used in payment of internal revenue taxes who shall have tendered a certified, cashier's, or treasurer's check or money order as provisional payment therefor, in accordance with the terms of this subsection, shall be released from the obligation to make ultimate payment thereof until such certified, cashier's or treasurer's check or money order so received has been duly paid.

(B) *Check unpaid.* If any such check or money order so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of the bank on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

(b) *Other checks*—(1) *Authority to receive.* Collectors may receive checks in addition to those specified in subsection (a) in payment of taxes other than those payable by stamp during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(2) *Ultimate liability.* If a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

26 U. S. C. 3791. RULES AND REGULATIONS—(a) *Authorization*—(1) *In general.* Except as provided in section 1928 (a), Cotton Futures, section 2599, Marihuana, section 2559, Narcotics, section 3176, Liquor, and section 1805, Silver, the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

(2) *In case of change in law.* The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

26 U. S. C. 3809 VERIFICATION OF RETURNS; PENALTIES OF PERJURY—(a) *Penalties.* Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(b) *Signature presumed correct.* The fact that an individual's name is signed to a return, statement, or other document filed shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

(c) *Verification in lieu of oath.* The Commissioner, under regulations prescribed by him with the approval of the Secretary, may require that any return, statement, or other document required to be filed under any provision of the internal revenue laws, shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of any oath otherwise required.

## SUBPART A—SCOPE OF REGULATIONS

§ 192.1 *Fermented liquors.* These regulations, "Regulations 18, Fermented Malt Liquors" (26 CFR Part 192), contain the procedural and substantive requirements relative to the production, taxpayment, and withdrawal from brewery premises, of fermented liquors and cereal beverages. The provisions of this part cover the location and use of brewery premises; brewery construction, equipment, meters, and qualifying documents; changes in name, proprietorship, control, location, premises, and equipment; action by district supervisor and Commissioner; special tax; tax on fermented liquor; stamps, marks, and brands; exportation, free of tax, of fermented liquors; use of fermented liquors as supplies on vessels and aircraft; and the maintenance of records and filing of reports in connection with the foregoing operations and conditions.

## SUBPART B—DEFINITIONS

§ 192.10 *Meaning of terms.* As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this subpart.

§ 192.11 *Brewer.* "Brewer" shall mean the proprietor of brewery premises.

DERIVATION: T. D. 5769.

§ 192.12 *Brewery premises.* "Brewery premises" shall mean the premises described as such in the brewer's notice on Form 27–C, where fermented liquors are to be manufactured and bottled. "Brewery bottling house" shall mean that portion of the brewery premises set apart by the brewer, and so described on Form 27–C, where fermented liquors are to be bottled. "Brewery" shall mean the remainder of the brewery premises.

DERIVATION: T. D. 5769.

§ 192.13 *Brewing.* "Brewing" shall mean the manufacture of fermented liquors of any nature or description for sale, from malt, wholly or in part, or from any substitute therefor.

§ 192.14 *Business day.* "Business day" shall mean the 24-hour cycle of operations in effect at the plant, which, if other than the calendar day, is subject to the approval of the district supervisor. The business day, having been once established, shall be applicable to all records and operations of the plant, and shall not be changed without prior approval of the district supervisor.

DERIVATION: T. D. 5769.

§ 192.15 *Collector.* "Collector" shall mean collector of internal revenue.

§ 192.16 *Commissioner.* "Commissioner" shall mean the Commissioner of Internal Revenue.

§ 192.17 *District supervisor or supervisor.* "District supervisor" or "supervisor" shall mean the person having charge of the administration of the internal revenue laws pertaining to the manufacture and taxpayment of fermented liquor in any designated district of the Alcohol Tax Unit of the Bureau of Internal Revenue.

§ 192.18 *Fermented liquor or beer.* "Fermented liquor" or "beer" shall mean all kinds and types of liquors produced by the fermentation of malt, wholly or in part, or from any substitute therefor.

§ 192.19 *Gallon.* The word "gallon" wherever used in the internal revenue law relating to beer, lager beer, ale, porter, and other similar fermented liquors, means a wine gallon, the liquid measure containing 231 cubic inches. (53 Stat. 373; 26 U. S. C. 3160.)

§ 192.20 *Including.* The word "including" shall not be deemed to exclude things other than those enumerated which are in the same general class.

§ 192.21 *Inclusive language.* Words in the plural form shall include the singular and vice versa, and words in the masculine gender shall include females, associations, copartnerships, and corporations.

§ 192.22 *I. R. C.* "I R. C." shall mean the Internal Revenue Code.

§ 192.23 *Person.* "Person" shall include natural persons, associations, copartnerships, corporations, and other legal entities.

§ 192.24 *U. S. C.* "U. S. C." shall mean the United States Code.

## SUBPART C—LOCATION AND USE OF BREWERY PREMISES

§ 192.30 *Restrictions.* A brewery and brewery bottling house may not be established or operated in any dwelling house, shed, yard, or inclosure connected therewith or on board of any vessel or boat ,or in any building or on any premises where distilled spirits or alcohol or vinegar or ether are manufactured or produced or stored; or where any liquor or beverages are kept or sold or dealt in either at wholesale or retail.

§ 192.31 *Use of brewery premises.* The brewery premises shall consist of the land and buildings described in the brewer's notice on Form 27–C and shall be used exclusively for the purposes of manufacturing and packaging or bottling beer, lager beer, ale, porter, and similar fermented liquors, cereal beverage containing less than one-half of 1 per centum of alcohol by volume, vitamins, ice, malt, malt sirup, and other by-products; of drying spent grain from the brewery; of recovering carbon dioxide and yeast; and of storing bottles, packages, and

supplies necessary or incidental to all such manufacture: *Provided*, That all bottling of beer and cereal beverage, all storage of bottled beer before taxpayment, and all storage of bottled cereal beverage, shall be done in a separate department on the brewery premises designated "brewery bottling house": *And provided further*, That where any brewery premises were, on June 26, 1936, being used by a brewer for purposes other than those described in this subpart, the use of such premises for such other purposes may be continued by such brewer.

(53 Stat. 371, as amended; 26 U. S. C. 3158)

DERIVATION T. D. 5769.

§ 192.32 *Use of brewery bottling house.* Brewery bottling houses shall be used exclusively for the purpose of bottling beer, lager beer, ale, porter, and similar fermented liquor, and cereal beverage containing less than one-half of 1 per centum of alcohol by volume, produced in the brewery in connection with which the bottling house is operated, and for the storage of bottles, tools, and supplies necessary or incidental to the manufacture or bottling of fermented liquor and cereal beverage: *Provided*, That where any brewery bottling house was, on June 26, 1936, being used by the brewer for purposes other than those described in this subpart, including the bottling of soft drinks, the use of such bottling house for such purposes may be continued by such brewer: *And provided further*, That the brewery bottling house of any brewery shall not be used for bottling the products of any other brewery.

(53 Stat. 371, as amended; 26 U. S. C. 3158)

DERIVATION: T. D. 5769.

§ 192.33 *Storage of tax-paid bottled beer.* Tax-paid bottled beer may not be stored in the brewery bottling house nor in any other part of the brewery premises: *Provided*, That undelivered tax-paid bottled beer may be held temporarily and returned tax-paid bottled beer may be relabeled, recased, or destroyed in the brewery bottling house, in accordance with the provisions of §§ 192.333–192.337. Brewers desiring to store tax-paid beer must provide storage therefor off brewery premises. If the premises on which the tax-paid beer is stored are in the same building in which the brewery or brewery bottling house is located, or in a building adjoining a brewery building or brewery bottling house building, they must be separated from the brewery or brewery bottling house by solid, unbroken walls and floors, substantially constructed and so situated that there are no means of interior communication with buildings or rooms of buildings on brewery premises: *Provided*, That authorized conduits or pipe lines for refrigeration or other utilities may pass through such walls and floors. An account of the fermented liquor and cereal beverage held in such off-premises storage must be maintained as a part of the records required by § 192.446.

DERIVATION: T. D. 5769.

## SUBPART D—CONSTRUCTION

§ 192.40 *Buildings on brewery premises.* Brewery buildings and brewery bottling house buildings must be securely constructed of substantial solid materials. If there are buildings, or parts of buildings, not on the brewery premises but adjoining or constituting a part of the buildings on the brewery premises, such other buildings or parts thereof must be entirely separated from the brewery and brewery bottling house by substantial, solid and unbroken walls and floors. The brewery bottling house must be adjacent or contiguous to the brewery. If the brewery and the brewery bottling house are adjoining, there shall be no interior communication between the two parts of the brewery premises, and the brewery bottling house must be separated from the remainder of the brewery premises by solid, unbroken walls and floors, except for authorized conduits, conveyors, tunnels, and pipelines. All such buildings shall be so arranged and constructed as to afford adequate protection to the revenue and facilitate appropriate supervision by Government officers.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.41 *Division of brewery.* The brewer may divide his brewery into cellars or rooms: *Provided, however*, That each such cellar or room must be plainly designated by having painted on the doors or entrance thereto the designated use of such cellar or room, such as "Storage Room," "Racking Room," "Fermenting Room," etc. If more than one cellar or room is used for the same purpose, the letter "A" must be placed after the designated use painted on the door or entrance of one of the cellars or rooms, and a succeeding letter of the alphabet after each of the others; such as "Storage Room A," "Storage Room B," etc.

DERIVATION: T. D. 5769.

§ 192.42 *Empty container storage room.* If empty barrels, kegs, bottles, other containers, or other supplies are stored on the brewery premises, they must be so stored as to be completely segregated from filled containers. A separate room or building may be provided for that purpose.

DERIVATION: T. D. 5769.

§ 192.43 *Government cabinet.* The brewer shall provide a metal cabinet of adequate strength and size, suitably equipped for locking with a Government lock or cap seals, for use in safeguarding locks, keys, seals, and other Government property. Each such cabinet shall be subject to approval by the district supervisor.

DERIVATION: T. D. 5769.

### PIPELINE TRANSFERS TO BOTTLING HOUSE

§ 192.44 *General.* All beer and cereal beverage transferred from the brewery to the brewery bottling house must pass through the authorized pipelines and meters: *Provided*, That draught beer intended for consumption in the bottling house may be transferred thereto from the brewery in kegs or other bulk containers.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.45 *Pipelines.* The pipeline used for the purpose of transferring such products to the brewery bottling house for bottling must be constructed of metal and be exposed to view throughout its entire length. If the pipeline is constructed above the ground, it must be visible at all points and no opening will be permitted therein except as provided in this subpart. The pipeline must be secured at the point where it leads from the brewery and the point where it enters the brewery bottling house in the same manner as provided for an under ground pipeline. The pipeline may be located underground if placed within a conduit not less than 15 inches in diameter.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.46 *Conduit.* The conduit must be constructed of steel or iron or other equally permanent material protected either at the brewery end or brewery bottling house end by a solid iron or steel door, or doors, with hinges securely fastened to the end of the conduit, and the door must be equipped with facilities for locking with a Government seal lock, or for the attachment of cap seals. The conduit shall be embedded in concrete, and the sections of piping, if more than one section is employed, must be securely connected by brazing or welding. The conduit must pursue a straight course from end to end, and provision must be made for lighting it at both ends in such manner that ready examination of the interior of the conduit may be made. No opening whatever will be permitted in the pipeline or conduit throughout its entire length, except as provided in Subparts D and F. It must not traverse premises intervening the brewery and brewery bottling house which are used in the conduct of another business, or which are not used by the brewer in connection with the brewery business.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.47 *Tunnel specifications.* Where a tunnel is employed, the pipeline must be placed therein so as to admit of ready examination at all points from end to end. Communication between the brewery and the brewery bottling house, except through the authorized pipe, must be prevented by the erection within the tunnel, or at either end thereof, of a suitable door, constructed of metal, equipped for locking with a Government seal lock.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.48 *Other pipelines.* If it is necessary that pipelines for refrigeration, for heating purposes, or for water, pass from the brewery to the brewery bottling house, such pipes must be installed in such manner that they cannot be used for conveying fermented liquor to the brewery bottling house.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.49 *Facilities for cleaning pipeline.* Where it is desired to clean the

pipeline from the brewery to the brewery bottling house by the use of brush, ball, or shot, a return line must be provided. The return line must be brazed, welded, or sweated to the beer line close to the outlet side of the meter if the meter is located in the brewery, or close to the inlet side if the meter is located in the brewery bottling house. Petcocks not larger than one-eighth inch may be installed in pipelines.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVATION: T. D. 5769.

SUBPART E—SIGN

§ 192.55 *Posting of sign.* The brewer shall place and keep conspicuously, on the outside and at the front of the brewery where it can be plainly seen, a sign exhibiting in plain and legible letters, painted in oil colors or gilded, not less than 3 inches in height, and of a proper and proportionate width, the name of the proprietor of the brewery and the word "Brewery."

SUBPART F—EQUIPMENT

§ 192.60 *Tanks and vats.* Each stationary tank, vat, cask, or other container used, or intended for use, as a receptacle for wort or beer, in connection with the operation of the brewery, shall be located in the brewery building and be constructed of suitable materials. Each such tank, vat, cask, or other container shall be permanently marked to show its designated use, such as "Fermenting Tank," "Storage Tank," "Settling Tank," etc., and its serial number and capacity in barrels of 31 gallons. Tanks that are used for a dual purpose, such as fermenting and storage, will be designated to indicate both usages. All such tanks or other containers shall be equipped with a suitable measuring device so that the actual contents thereof may be determined, except that in lieu of equipping each tank or container with an individual measuring device, the brewer may use meters, portable gauge glasses, or other suitable measuring device, whereby the contents of the tank or other container may be correctly ascertained.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVATION: T. D. 5654.

§ 192.61 *Brewery bottling house equipment.* All tanks and other apparatus and equipment in brewery bottling houses must be so constructed and arranged as to admit of examination of every part thereof, and shall be marked as to use, serial number, and in the case of tanks or other containers for beer, the capacity in barrels of 31 gallons. All tanks for beer shall be equipped with permanently installed measuring devices so that the actual contents may be determined at any time.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.62 *Details of construction and equipment.* Where details of construction and equipment are not covered by this part, such construction and equipment must afford the same degree of security and protection to the revenue as is intended by the specifications prescribed in this part. The Commissioner may approve details of construction and equipment in lieu of those specified in this part where it is shown that it is impracticable to conform to the prescribed specifications, and the proposed construction and equipment will afford the same degree of security and protection to the revenue as is intended by the specifications prescribed in this part. When it is proposed to substitute construction and equipment for that for which specifications are prescribed, approval of the Commissioner must first be obtained.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157.

§ 192.63 *Breweries and bottling houses heretofore established.* Breweries and brewery bottling houses heretofore established may continue to operate if the present construction and equipment afford adequate security and protection to the revenue. The Commissioner or district supervisor may at any time require the brewer to make changes in construction and equipment conforming to this part, if deemed necessary to safeguard the revenue. All breweries and brewery bottling houses hereafter established, and changes in existing establishments, must be in conformity with this part.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

SUBPART G—BEER METERS

DERIVATION: T. D. 5769.

§ 192.70 *Meters required.* Brewers shall be required to provide, at their own expense, approved meters for measuring beer to be packaged or transferred to the brewery bottling house, which meters shall be accessible to Government officers at all hours during which the brewery is operating. District supervisors shall furnish brewers with a list of manufacturers whose meters conform to the prescribed specifications and have been approved.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVATION: T. D. 5769.

§ 192.71 *Notice of meter shipment.* On the date a meter is shipped to a brewery, the manufacturer shall so advise the supervisor of the district wherein the brewery is located, stating the date of shipment and the manufacturer's serial number of the meter. The manufacturer's seals on the meter must remain intact until removed by an inspector and replaced with Government cap seals.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

§ 192.72 *Location and installation.* Meters must be provided for racking, and will be installed in the brewery as near as possible to the racker, and be connected thereto by a metal pipe, in such manner that all beer moving to the racking machine will pass through the meter. The meter end of the pipe must be welded, sweated or brazed to a companion flange to be secured to the meter with cap sealed bolts. All other joints and fittings in the pipe must be equally secure. Each bottling meter must be installed in such manner that all beer transferred to the brewery bottling house will pass through the meter. The beer line from the brewery to the brewery bottling house must be brazed, sweated, or welded to a companion flange which shall be fitted to the inlet flange of the meter when the meter is located in the brewery bottling house, and to the outlet flange of the meter when the meter is located in the brewery. This companion flange will be bolted to the meter. The flange and all fittings in the pipeline will be sealed with Government cap seals. All meters will be so located that they will be readily accesible for tests and adjustments by Government officers.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVATION: T. D. 5769.

§ 192.73 *Strainers.* In order to protect meters from injury from foreign matter, a strainer must be placed in the pipeline ahead of each meter. The strainer must be located in the brewery, even though the meter may be located in the brewery bottling house, in order that the strainer may be dismantled for cleaning without Government supervision.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVATION: T. D. 5769.

§ 192.74 *Cap seals placed on meters.* Prior to approval of the installation of the meter, the inspector shall remove all manufacturer's seals and replace them with Government cap seals. The inspector shall enter on an appropriate record the serial number of each Government cap seal placed on the meter, together with the serial number of the meter to which attached. Each entry will be dated and initialed by the inspector. The record shall be retained in the Government cabinet.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVATION; T. D. 5654.

§ 192.75 *Inspection of meter.* Upon notice from the brewer that the meter has been received, the supervisor shall assign an inspector, or inspectors, to supervise its installation. When the inspector is satisfied that the meter is properly installed and pipe connections made in accordance with this part, he shall test the meter by the use of a master meter, and determine that it is operating within the tolerance prescribed by the "meter specifications." The inspector will report to the supervisor in writing, which report shall be accompanied by the report of the master meter test. The meter must not be used until such test has been made.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVATION; T. D. 5654.

§ 192.76 *Tests, repairs and adjustments.* When necessary in the opinion of the supervisor, he will detail an inspector to test the meter or supervise its dismantling and reassembling for the purpose of cleaning or repair. If a de-

fective meter cannot be repaired or a replacement meter installed without delay, the inspector will, upon removal of the meter, cause the open beer line to be closed by locking the cut-off valve with a Slaight seal lock or affixing a Government cap seal. When the repairs are completed or a new meter installed, the inspector will test the repaired or newly installed meter with a master meter. Minor repairs to the counter mechanism, such as cleaning to facilitate readings, will not necessitate a master meter check. If repair or adjustment of the meter is involved, a copy of the meter test report will be given to the brewer. If the continuous counter of the meter is advanced with water during the test, a report thereof will be made on Form 138, in triplicate. One copy thereof will be given to the brewer, one will be filed in the Government cabinet and one forwarded to the district supervisor. The use of any meter must be discontinued whenever it appears that the revenue will be jeopardized by the continued use of such meter.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVATION: T. D. 5769.

§ 192.77 *Facilities for meter test.* The brewer will provide adequate facilities for master meter tests of all regularly installed meters. The pipe lines to all meters will contain removable sections or other facilities, properly secured, to permit the installation of the master meter close to, and in series with, the brewer's meter. The pipelines will also contain an arrangement of valves and by-pass lines for inserting the Government meter and making the test without interfering with pumping operations, unless the brewer elects to stop operations for the meter tests in lieu of making such installations. All such installations must conform with the requirements of section 192.72.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVIATION: T. D. 5654.

SUBPART H—QUALIFYING DOCUMENTS

§ 192.85 *Notice on Form 27–C.* Every person engaged in, or intending to engage in, the business of a brewer, shall give notice of such intention on notice by brewer, Form 27–C, in triplicate, and file the same with the district supervisor. Except as provided in § 192.93 in the case of amended or supplemental notices, all information indicated by the lines of the form and the instructions printed thereon, and required by this part, shall be furnished. The notices shall be numbered serially, commencing with No. 1 for the original, and the sequence will be continued for all amended or supplemental forms thereafter filed.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.86 *Kind of fermented malt liquor.* The kind of fermented malt liquors intended to be produced will be stated, such as "beer," "ale," "porter," "sake," etc.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.87 *Location of business.* The location of the brewery premises must be stated as explicitly as possible. If located in a city, the name of the city and the street and number must be given. If located in the country, the name of the county and the nearest post office, with the distance and direction therefrom, and the name or number of the road or highway on which situated, should be given.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.88 *Description of premises.* The lot or tract of land comprising the brewery premises, and the portion of that lot or tract of land occupied by the brewery bottling house, must be separately described on Form 27–C, by courses and distances, in feet and hundredths thereof or inches, with the particularity required in conveyances of real estate. The continuity of the brewery premises must be unbroken, except that the continuity will not be considered as broken where the premises are divided by a public street or highway, or by a railroad right-of-way where the railroad is a common carrier, if the parts of the premises so divided abut on such street, highway or railroad right-of-way and are opposite each other. In such cases each tract of land constituting the brewery premises shall be described separately. Nothing in this section shall be construed to prevent the separation of the brewery bottling house into two or more parts or sections.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.89 *Description of buildings.* All buildings on the brewery premises will be described separately in the notice, stating the purpose for which each will be used, and the size and the material of which constructed. If more than one building is used for the same purpose, such buildings must be given alphabetical designations, following the purpose for which to be used.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.90 *Description of apparatus and equipment.* The brew kettles, mash tubs, fermenting tanks, storage tanks, and other major equipment used in the production of fermented liquor will be described separately as to use, serial number, and capacity, in barrels of 31 gallons, as specifically required by the Form 27–C and the instructions thereon. All tanks, bottling apparatus, and other major equipment in the brewery bottling house used for bottling fermented liquor, must be described in the notice, separately, as to use, serial number, and, in the case of tanks, capacity in barrels of 31 gallons.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.91 *Production and capacity.* The number of brews that can be made in the brew kettle in 24 hours, and the maximum quantity, in barrels, of fermented malt liquor that can be produced in 30 days, and the estimated number of barrels of fermented malt liquor that will be manufactured during the period of 30 days, must be stated in the appropriate spaces therefor in the Form 27–C.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.92 *Statement of title.* The name and address of the owner of the fee and of any mortgagee, judgment creditor, or other encumbrancer of the premises on which are situated the brewery and the brewery bottling house shall be stated in the notice.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.93 *Supplemental notice.* Amended or supplemental notices, Form 27–C, may be executed in skeleton form, except as to those items amended or supplemented. All other items which are correctly set forth in prior notices, and in which there has been no change since the last preceding notice, may be incorporated by reference to the respective notice previously filed. Such incorporation by reference shall be made by entering for each such item in the space provided therefor the statement "No change since filing Form 27–C, Serial No. ------, dated ----------, 19-----."

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.94 *Corporate documents.* There must be submitted with, and made a part of, the original or initial notice on Form 27–C, given by a corporation to engage in the business of a brewer, properly certified copies, in triplicate, of the following documents:

(a) Articles of incorporation and amended articles of incorporation.

(b) Certificate of incorporation.

(c) Certificate authorizing corporation to operate in State where brewery is located, if other than that in which incorporated.

(d) Extracts of minutes of meetings of stockholders, showing election of directors.

(e) By-laws.

(f) Extracts of the minutes of meetings of the board of directors, showing the election of officers.

(g) Extracts of the minutes of meetings of the board of directors, authorizing certain officers or other persons to sign for the corporation.

(h) List of the names and addresses of the officers and directors.

(i) List of stockholders, as provided in section 192.95.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.95 *List of stockholders.* In the case of corporations and similar legal entities, there must be submitted with Form 27–C, at the commencement of business and annually thereafter on May 1, a list of the names and addresses of all stockholders and other persons interested in the corporation or other legal entity and the amount and nature of the stockholding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him: *Provided,* That where more than 100 persons are interested in the corporation or other legal entity as stockholders or otherwise,

there need be furnished only the names and addresses and the amounts and nature of the stockholding or other interest of the 100 persons having the largest ownership or other interest in each of the respective classes of stock or other interest, except where more complete information shall be specifically required by the Commissioner: *And provided further,* That where there has been no change in the stockholders and other persons interested in the corporation or other legal entity, or in the extent of the stockholding or other interest of such persons, the brewer may furnish annually a certified statement, in triplicate, to that effect in lieu of the prescribed list. Where a corporation operates two or more breweries situated in the same supervisory district, or wholly owns one or more subsidiaries operating breweries so situated, and in connection with qualifying for the operation of one of such breweries files a list of stockholders and other persons interested, as prescribed in this subpart, the filing of an additional list for each brewery will not be required, *Provided,* That in lieu of such additional list there is submitted with the brewer's notice, Form 27–C, a certificate, in triplicate, definitely identifying the corporation and plant with whose notice the list of stockholders and other persons interested is filed, and giving the date of the filing thereof.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.96 *Affidavit.* In the case of a corporation, there must be submitted with each list of stockholders an affidavit, in triplicate, executed by an officer of the corporation authorized so to do, showing the number of shares of each class of stock or other evidence of ownership in the corporation, such as voting trust certificates, authorized and outstanding, the par value thereof, and the voting rights of the respective owners or holders, and certifying to the correctness of the list of stockholders or the statement authorized to be furnished with the notice in lieu of such list. In the case of an individual owner or copartnership, there must be submitted with Form 27–C, at the commencement of business and annually thereafter on May 1, an affidavit, in triplicate, giving the name of every person interested or to be interested in the brewery, whether such interest appears in the name of the interested party or in the name of another for him.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.97 *Articles of copartnership or association.* In the case of a copartnership or association, a certified copy, in triplicate, of the articles of copartnership or association, if any, and, where the business is to be conducted under a firm or trade name, a trade name certificate or statement in lieu thereof, in accordance with section 192.98, shall be submitted with and constitute a part of the notice, Form 27–C.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.98 *Trade name; certificate.* Where the brewer intends to do business under a firm or trade name, there must be submitted with and made a part of the notice, Form 27–C, certified copies, in triplicate, of the certificate or other document filed with or issued by State officials under the laws of the State to cover the transaction of business under such firm or trade name. If no certificate or other document is required by the laws of the State, the brewer shall furnish a statement, in triplicate, to that effect.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.99 *Bottling under trade name.* Where a brewer intends to bottle beer under a trade name, or names, other than the name under which he is qualified to operate, he must include such trade name in Form 27–C, furnish the trade name certificate, or statement in lieu thereof required by section 192.98, and obtain appropriate certificates of label approval where such certificates are required by Regulations 7 issued under the Federal Alcohol Administration Act (27 CFR Part 7).

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.100 *Power of attorney, Form 1534.* If the notice or other qualifying documents are signed by an attorney in fact for an individual, partnership, association, or corporation, or by one of the partners for a copartnership or association, or, in the case of a corporation, by an officer or other person not authorized to sign by the corporate documents described in § 192.94, such notice or other qualifying documents must be supported by a duly authenticated copy of the power of attorney conferring authority upon the person signing the document to execute the same. Such powers of attorney will be executed on Form 1534, in triplicate, and submitted to the district supervisor.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.101 *Execution of power of attorney.* Where the principal giving the power of attorney is an individual, it must be executed by him in person, and not by an agent. In the case of a copartnership or association, powers of attorney authorizing one or more of the partners, or another person, to execute documents on behalf of the copartnership or association must be executed by all of the partners constituting the firm. However, if one or more members less than the whole number constituting the firm have been delegated the authority to appoint agents or attorneys in fact, the power of attorney may be executed by such member or members, provided it is supported by a duly authenticated copy, in triplicate, of the document conferring authority upon the member or members to execute the same. Where, in the case of a corporation, powers of attorney are executed by an officer thereof, such documents must be supported by triplicate copies of the authorization of such officer so to do, certified by the secretary or assistant secretary of the corporation, under the corporate seal, to be true copies.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.102 *Duration of power of attorney.* Powers of attorney authorizing the execution of documents on behalf of a person engaged in, or intending to engage in, the business of a brewer shall continue in effect until written notice, in triplicate, of the revocation of such authority is received by the district supervisor.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.103 *Bond, Form 1566.* Every person intending to commence or to continue the business of a brewer shall, upon filing his notice of such intention, Form 27–C, and before proceeding with such business, execute bond on Form 1566, in triplicate, in conformity with the provisions of Subpart I, and file the same with the district supervisor.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.104 *Penal sum.* The penal sum of a brewer's bond to cover the manufacture of fermented liquor must be equal to the amount of the tax prescribed by law, which, in accordance with the findings of the district supervisor of the district in which the brewery premises are located, the brewer will be liable to pay during any one month, that is to say, the amount corresponding to the maximum quantity of fermented liquor that, in his opinion, will actually be taxpaid on said brewery premises during any one calendar month: *Provided,* That the penal sum of any such bond shall not exceed $100,000 nor be less than $1,000.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.105 *Plat and plans.* Every person intending to engage in the business of a brewer must submit to the district supervisor with his notice, Form 27–C, an accurate plat of the brewery premises, and accurate plans of the buildings, apparatus, and equipment thereon, in triplicate, conforming to the requirements of Subpart J.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.106 *Additional information.* The Commissioner may at any time, in his discretion, require the proprietor of a brewery to furnish such additional information as he may deem necessary.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.107 *Instruments and papers made part of regulations.* The terms, conditions, and instructions contained in instruments and papers required to be furnished by law or regulations are hereby made a part of this part as fully and to the same extent as if incorporated in this part.

## SUBPART I—BONDS AND CONSENTS OF SURETY

§ 192.115 *General requirements.* Every person required to file a bond or consent of surety under this part shall prepare and execute it on the prescribed form, in triplicate, in accordance with this part and the instructions printed on the form, and shall submit it to the district supervisor.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.116 *Surety or security.* Bonds required by this part shall be given with surety or collateral security.

(Sec. 1, 28 Stat. 279; 6 U. S. C. 6; 40 Stat. 1148, as amended; 6 U. S. C. 15; 53 Stat. 368; 26 U. S. C. 3155)

§ 192.117 *Corporate surety.* Bonds may be given with corporate surety authorized by the Secretary of the Treasury to become surety on Federal bonds, subject to the limitations prescribed by the Secretary in Treasury Department Form 356, Commissioner of Accounts and Deposits, Section of Surety Bonds, which is issued semiannually, and subject to such amendatory circulars as may be issued from time to time.

(Sec. 1, 28 Stat. 279; 6 U. S. C. 6; 53 Stat. 368; 26 U. S. C. 3155)

§ 192.118 *Two or more corporate sureties.* A bond executed by two or more corporate sureties shall be the joint and several liability of the principal and the sureties: *Provided,* That each corporate surety may limit its liability in terms upon the face of the bond in a definite, specified amount, which amount shall not exceed the limitations prescribed for such corporate surety by the Secretary, as set forth in Treasury Department Form 356. When the sureties so limit their liability, the aggregate of such limited liabilities must equal the required penal sum of the bond.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.119 *Powers of attorneys.* Powers of attorney and other evidence of appointment of agents and officers to execute bonds on behalf of corporate sureties are required to be filed with, and passed upon by, the Commissioner of Accounts and Deposits, Section of Surety Bonds, Treasury Department. Such powers and other evidence of appointment need not be filed with, or submitted to district supervisors.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.120 *Individual sureties.* Bonds may be given with individual sureties, of which there must be not less than two, each of whom must qualify by executing Form 33 in triplicate. Individual sureties must be citizens of the United States and reside in the State in which the business of the principal is to be conducted. No person will be accepted as an individual surety in a State in which he is not authorized to become a surety.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.121 *Ownership of real property.* Each individual surety must own unencumbered real property, in fee simple, the appraised value of which, over and above any exemptions from execution allowed by the laws of the State, is equal to the penal sum of the bond. Such real property must be located within the State where the business of the principal is to be conducted.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.122 *Description of real property.* The real property must be described in the surety's affidavit, Form 33, with all of the formalities required in conveyances of real estate by the laws of the State in which it is situated.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.123 *Execution of Form 33.* The surety's affidavit on Form 33 shall contain all of the information required by this part and the instructions printed on the form. The form shall be subscribed and sworn to before an officer duly authorized to administer oaths, and one copy thereof shall be attached to each copy of the bond to which it relates.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.124 *Certificate of title.* There must be submitted with the surety's affidavit, Form 33, a certificate of title, in triplicate, showing that the surety has a fee simple title, free of encumbrances, to the realty described in the form.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.125 *Appraisal.* There will also be submitted with Form 33 an appraisal, in triplicate, by two or more competent persons designated by the district supervisor for the purpose, showing separately the value of the land and buildings and a full and clear statement of the method employed by them in determining their valuation. The appraisal shall be at the expense of the principal on the bond, unless it is made by Government officers.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.126 *Investigation.* The district supervisor must cause an investigation to be made of all the facts stated in the surety's affidavit on Form 33 and supporting documents and shall forward one copy of the report of such investigation to the Commissioner with the bond and accompanying Form 33.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.127 *Requalification.* The Commissioner or district supervisor may at any time, in his discretion, require the requalification of individual sureties on Form 33.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.128 *Interest in business.* The surety, whether individual or corporate, must have no interest whatever in the business covered by the bond.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.129 *Deposit of collateral.* Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of individual or corporate sureties. District supervisors on receiving such bonds or notes, or other obligations, pledged and deposited by principals as collateral security in lieu of surety, shall deposit such securities as required by Department Circular No. 154, revised (31 CFR 225).

(40 Stat. 1148, as amended; 6 U. S. C. 15; 53 Stat. 368; 26 U. S. C. 3155)

§ 192.130 *Consents of surety.* Consents of surety to a change in the terms of a bond must be executed on Form 1533 in as many copies as are required of the bond which they affect, by the principal and all sureties with the same formality and proof of authority to execute as are required for the execution of bonds. Form 1533 will be used by obligors on collateral bonds as well as those on surety bonds. The Form 1533 must properly identify the bond affected thereby and state specifically and precisely what is covered by the extended terms thereof. If the surety is a corporation, the consent may be executed by an agent or attorney in fact duly authorized so to do by power of attorney filed by the surety with the appropriate district supervisor, through the office of the Commissioner; or the consent may be executed by the home office officials of such corporate surety; except that, in cases where the saving of time is an element, the consent may be executed by an agent or attorney in fact where the home office officials, by specific direction, direct and order its execution. A copy of such specific direction should be attached to each copy of such consent.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.131 *Approval required.* No individual, firm, partnership, corporation, or association intending to commence or to continue the business of a brewer shall commence such business until all bonds in respect of such business required by any provision of law have been approved by the district supervisor.

(53 Stat. 311; 26 U. S. C. 2815)

§ 192.132 *Renewal of bond.* No person shall continue in the business of a brewer unless he files a new bond once in four years with the district supervisor, which bond shall be prepared in accordance with this subpart, and the same has been approved.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.133 *Authority to approve.* District supervisors are authorized to approve all brewers' bonds and consents of surety relating thereto.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.134 *Cause for disapproval.* Bonds or consents of surety submitted by any individual, firm, partnership, corporation, or association in respect to the business of a brewer may be disapproved if the individual, firm, partnership, corporation, or association giving the same, or owning, controlling, or actively participating in the management of such business of the individual, firm, partnership, corporation, or association giving the same, shall have been previously convicted in a court of competent jurisdiction of:

(a) Any fraudulent noncompliance with any provision of any law of the United States, if such provision relates to internal revenue or customs taxation of distilled spirits, wines, or fermented malt liquors, or if such an offense shall have been compromised with the individual, firm, partnership, corporation, or association upon payment of penalties or otherwise; or

(b) Any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting

the manufacture, sale, importation, or transportation of distilled spirits, wine, fermented malt liquor, or other intoxicating liquor.

(53 Stat. 311; 26 U. S. C. 2815)

§ 192.135 *Appeal to Commissioner.* Where a bond or consent of surety is disapproved by the district supervisor, the person giving the bond may appeal from such disapproval to the Commissioner.

(53 Stat. 311; 26 U. S. C. 2815)

§ 192.136 *Disapproval of Commissioner final.* The disapproval by the Commissioner of any bond or consent of surety with respect to the commencement or continuance of the business of the brewer shall be final.

(53 Stat. 311; 26 U. S. C. 2815)

§ 192.137 *Additional or strengthening bonds.* In all cases where the penal sum of the bond on file and in effect is not sufficient, computed as prescribed by law and regulations, the principal may give an additional or strengthening bond in a sufficient penal sum, provided the surety thereon is the same as on the bond already on file and in effect; otherwise a new bond covering the entire liability will be required. Such additional or strengthening bonds being filed to increase the bond liability of the principal and the surety, they are in no sense substitute bonds, and the district supervisor will refuse to approve, or recommend the approval of, any additional or strengthening bond where any notation is made thereon intended, or which may be construed, as a release of any former bond, or as limiting the amount of either bond to less than its full penal sum. Additional or strengthening bonds must show the current date of execution and the effective date in the blank spaces provided therefor. Such bonds must have marked thereon, by the obligors at the time of execution, "Additional Bond," or "Strengthening Bond."

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.138 *New bond.* A new bond may be required at any time in the discretion of the Commissioner or district supervisor. A new bond shall be required immediately in the case of the death, removal, or insolvency of an individual surety, or the insolvency of a corporate surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, must execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. When, in the opinion of the Commissioner or the district supervisor, the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason whatever, the principal will be required to give a new bond. Where a bond is found to be not acceptable, the principal shall be required to file immediately a new and satisfactory bond, or discontinue business forthwith.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.139 *Superseding bond.* Where a new bond is submitted by the principal to supersede a bond or bonds then in effect, and such superseding bond has been approved, notice of termination of the superseded bond may be issued as provided in Subpart N. Superseding bonds must show the current date of execution and the date they are to be effective, and each such bond shall have marked thereon, by obligors at the time of execution, "Superseding Bond."

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

SUBPART J—PLATS AND PLANS

§ 192.145 *Preparation.* Every plat and plan shall be drawn to scale and each sheet thereof shall bear a distinctive title, enabling ready identification, and shall show the cardinal points of the compass. The minimum scale of any plat will be not less than 1/50 inch per foot. Each sheet of the plat and plans shall be numbered, the first sheet being designated number 1, and the other sheets numbered in consecutive order. Plats and plans shall be submitted on sheets of tracing cloth, or sensitized linen. The dimensions of plats and plans shall be 15 by 20 inches outside measurement, with a clear margin of at least 1 inch on each side of the drawing, lettering, and writing. Plats and plans may be original drawings, or reproductions made by the "ditto process," or by blue or brown line lithoprint, if such reproductions are clear and distinct.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5654.

§ 192.146 *Description of brewery premises.* Plats must show the outer boundaries of the brewery premises and of the portion thereof comprising the brewery bottling house by courses and distances, in feet and hundredths thereof or inches, and the point of beginning of each with respect to its distance and bearings from some near and well-known landmark, and must contain an accurate depiction of the building, or buildings, located on the premises and any driveway, public highway, or railroad right-of-way adjacent thereto or connecting therewith. The brewery and brewery bottling house must be shown in contrasting colors or by a legend such as cross hatching, a broken line, etc. When the separation of the brewery and brewery bottling house is not vertical from ground to roof, such additional horizontal and vertical views shall be submitted as will clearly show the separation of the premises. If the premises are separated by a public highway, or a railroad right-of-way, and the tracts of land comprising the premises, or parts thereof, abut on such highway, or right-of-way, opposite each other, the different tracts will be described separately by courses and distances, in feet and hundredths thereof or inches. If two or more buildings are used, the designated name of each will be indicated and all passageways and other openings, if any, and all connecting pipelines used for the conveyance of fermented liquor between the same depicted. All pipelines and other connections between the brewery and brewery bottling house, or between the brewery premises and other premises must be indicated on the plat and identified as to use. Where two or more buildings are used for the same purpose, the name of each building shall include an alphabetical designation, beginning with "A" and they shall be so shown on the plat. All first floor exterior doors of each building on the premises will be shown on the plat.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.147 *Plans.* Plans will include a floor plan of each floor of each building actually used in connection with the manufacture, packaging, and bottling of fermented malt liquor, or other authorized activity, indicating the general dimensions of the rooms and floors. The location of doors, windows, and other openings will be shown. The approximate location and serial numbers of brew kettles, mash tubs, fermenting tanks, settling tanks, storage tanks, and other major apparatus and equipment used in the production of fermented malt liquor must be shown or indicated on the plan by drawing or wording. For example, where a number of tanks are located in a room, the approximate location of each tank may be shown on the plan by circle or square, and the kind and serial number of the tank indicated within the circle or square, or elsewhere on the plan, or the fact that the tanks are located within the room may be indicated by wording, giving the kinds and serial numbers of the tanks.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5654.

§ 192.148 *Conduits or pipelines.* The conduit or pipeline used for the transfer of fermented liquor from the brewery to the brewery bottling house will be shown in red on the plat, and the details of construction, the manner of securing same, and the location of meters and Government locks will be shown. All other pipelines connecting the brewery and brewery bottling house will be shown on the plat and will be designated as to use. The direction of flow of fermented liquor through the pipelines must be indicated by arrows on the plat.

(53 Stat. 318, 370, as amended; 26 U. S. C. 3155, 3157).

DERIVATION: T. D. 5769.

§ 192.149 *Certificate of accuracy.* The plat and plans shall bear a certificate of accuracy in the lower right hand corner of each sheet signed by the brewer, the draftsman, and the district supervisor, substantially in the following form:

---
(Name of brewer)

---
(Address)

Approved ----------
(Date)

---
(District supervisor)

Accuracy certified by:

---
(Name and capacity—for the brewer)

---
(Draftsman)

----------, 19----. Sheet No. -------
(Date)

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D.

§ 192.150 *Revised plats and plans.* The sheets of revised plats and plans shall bear the same number as the sheets superseded, but will be given a new date. Any additional plats and plans shall be given a new number in consecutive order, or will be otherwise numbered and lettered in such manner as will permit the filing of the plats and plans in proper sequence.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5654.

SUBPART K.—CHANGES IN NAME, PROPRIETORSHIP, CONTROL, LOCATION, PREMISES, AND EQUIPMENT

§ 192.160 *Changes as of March 1, 1950.* A brewer desiring to operate a brewery bottling house when these regulations become effective must file an amended notice on Form 27–C, plat, and bond or consent of surety, showing extension of the brewery premises to include the bottling house effective March 1, 1950. If a consent of surety is filed, it shall be in the following form: "To cover extension of the brewery premises to include the brewery bottling house pursuant to the Act of August 23, 1949 (Public Law 261, 81st Congress)."

DERIVATION: T. D. 5769.

CHANGES IN INDIVIDUAL, FIRM, OR CORPORATE NAME

§ 192.161 *Notice, Form 27–C.* Where there is a change in the individual, firm, or corporate name of the brewer, he must submit to the district supervisor notice on Form 27–C, in triplicate, setting forth the new name, which notice must be approved before operations may be commenced under the new name.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.162 *Amended articles of incorporation, etc.* Where there is a change in the corporate name of the brewer, he must submit to the district supervisor certified copies, in triplicate, of the amended articles of incorporation and the amended certificate of incorporation issued under the laws of the State in which incorporated, setting forth the change in the corporate name. If the operations are conducted in a State other than the State in which incorporated, there must also be submitted to the district supervisor certified copies, in triplicate, of the amended certificate issued under the laws of the State in which the operations are conducted authorizing the corporation to operate under its new name in such State.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.163 *Amended articles of copartnership or association.* Where there is a change in the firm name of the brewer, if the brewer is a copartnership or association, he must submit to the district supervisor certified copies, in triplicate, of the amended articles of copartnership or association, if any.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.164 *Sign.* Where there is a a change in the individual, firm, or corporate name of the brewer, he must change the brewery sign to conform to the provisions of § 192.55.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.165 *Records.* Where there is a change in the individual, firm, or corporate name of the brewer, he must keep records and submit reports covering operations under the new name.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.166 *Marking and branding.* Where there is a change in the individual, firm, or corporate name of the brewer, he will mark and brand barrels, kegs, and cases with the new name in accordance with the provisions of Subpart R of this part.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

TRADE NAMES

§ 192.167 *General.* Where the brewery premises are to be operated under a new trade name or style, the brewer must comply with the provisions of § 192.161, and, in addition thereto with the requirements of §§ 192.168–192.173.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.168 *Trade name certificate.* Where the brewery premises are to be operated under a trade name or style, other than that previously approved, the brewer must submit to the district supervisor certified copies, in triplicate, of the certificate or other document filed with or issued by State officials under the laws of the State, to cover the transaction of business under such trade name or style. If no such certificate or other document is required by the laws of the State to be filed with or issued by any State official to cover the transaction of business under a trade name, the brewer shall furnish a statement to that effect.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.169 *Amended articles of incorporation, etc.* Where the brewery premises are to be operated under a trade name or style, other than that previously approved, the brewer must, in the case of a corporation, submit to the district supervisor certified copies, in triplicate, of amended articles of incorporation and of certificates issued under the laws of the State in which the business is operated if different from the State in which incorporated, authorizing the corporation to do business under such trade name or style. If other documents than those specified are required under the laws of the State to effect a change in the name of the corporation, certified copies, in triplicate, of such documents must be submitted with the notice, Form 27–C, in lieu of those specified.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.170 *Amended article of copartnership or association.* Where the brewery premises are to be operated under a trade name or style, other than that previously approved, the brewer must, if the brewer is a copartnership or association, submit to the district supervisor certified copies, in triplicate, of the amended articles of copartnership or association, if any.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.171 *Sign.* Where the brewery premises are to be operated under a trade name or style, other than that previously approved, the brewer must change the brewery sign to conform to the provisions of § 192.55, except that no change of such sign will be required in the case of temporary operations under trade names.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.172 *Records.* Where the brewery premises are to be operated under a trade name or style, other than that previously approved, the brewer must make appropriate entries in the brewer's records covering operations under the new trade name.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.173 *Marking and branding.* Where the brewery premises are to be operated under a trade name or style, other than that previously approved, the brewer must mark and brand barrels, kegs, and cases with the new trade name in accordance with the provisions of Subpart R.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

CHANGES IN PROPRIETORSHIP

§ 192.174 *Nonfiduciary successor.* If the change in proprietorship of the brewery premises is brought about otherwise than by appointment of an administrator, executor, receiver, trustee, assignee, or other fiduciary, the successor must likewise qualify in the same manner as the proprietor of a new brewery, except that he may adopt the plat and plans of the predecessor, as provided in this subpart.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.175 *Fiduciary.* If the brewery premises are to be operated by an administrator, executor, receiver, trustee, assignee, or other fiduciary, the fiduciary must comply with the provisions of Subparts H, I, and J, to the extent that such provisions are applicable, except that in lieu of filing a new bond and new plat and plans the fiduciary may furnish a consent of surety, extending the terms of his predecessor's bond, and adopt the plat and plans of such predecessor. The fiduciary must also furnish certified copies, in triplicate, of the order of the court, or other pertinent documents, showing his qualifications as such fiduciary. The effective date of the qualifying documents filed by a fiduciary must be the same as the date of the court order, or the date specified therein, for him to assume control. If the fiduciary was not appointed by the court, the date of his appointment must coincide with the effective date of the qualifying documents filed by him.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.176 *Consent of surety.* The consent of surety extending the terms of the

predecessor's bond to cover operation of the brewery premises by a fiduciary must conform to the requirements of § 192.130 and be executed by both the fiduciary and the surety.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.177 *Plats and plans.* The adoption by a successor of the plat and plans of his predecessor shall be in the form of a certificate, in triplicate, in which shall be set forth the name of the predecessor, the address of the brewery premises, a description of the brewery and brewery bottling house, the number of each page comprising each plat and plan covered by such certificate, and a statement that the brewery premises, and the buildings, apparatus, and equipment thereon, are correctly described and depicted on such plat and plans.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.178 *Signs.* The successor, if other than a fiduciary temporarily operating the brewery premises, must change the brewery sign to conform to the requirements of § 192.55.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.179 *Approval required.* Operations may not be commenced by the successor until the qualifying documents required by the provisions of this subpart have been approved.

OTHER CHANGES IN PROPRIETORSHIP OR CONTROL

§ 192.180 *Change in partnership.* The withdrawal of one or more members of a partnership or the taking in of a new partner, whether active or silent, shall constitute a change in proprietorship. Likewise, the adjudication as a bankrupt of one or more of the copartners results in a dissolution of the partnership and, consequently, a change in proprietorship. Where such change in proprietorship of the brewery premises occurs, the successor must qualify in the same manner as the proprietor of a new brewery premises, except that the successor may adopt the plat and plans of the predecessor. Operations may not be commenced by the successor until the qualifying documents required by the provisions of this subpart have been approved.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.181 *Changes in stockholders, officers, and directors of corporation.* The sale or transfer of the capital stock of a corporation operating brewery premises does not constitute a change in the proprietorship of the brewery premises. However, where the sale or transfer of capital stock results in a change in the control or management of the business, or where there is any change in the officers or directors, the brewer must give notice thereof, in triplicate, to the district supervisor within 5 days of such change. Mere changes in stockholders of corporations not constituting a change in control need not be so reported. The district supervisor must, in the case of changes in officers or directors, be furnished extracts, in triplicate, of the minutes of the meetings showing the election of the new officers within 5 days after such election.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.182 *Reincorporation.* Where a corporation operating brewery premises is reorganized and a new charter or certificate of incorporation is secured, the new corporation must qualify in the same manner as the new proprietor of brewery premises, except that the new corporation may adopt the plats and plans of the predecessor.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.183 *Transfer of business.* When a transfer is made of a brewer's business and the stock on hand, the fermented liquor in stock may be transferred untaxpaid and taken up and accounted for by the successor in business who fully qualifies as a brewer.

DERIVATION: T. D. 5769.

CHANGES IN LOCATION, PREMISES, AND EQUIPMENT

§ 192.184 *Change in location.* Where there is a change in the location of the brewery premises, the brewer must comply with all applicable provisions of Subparts H, I, and J of this part, except that in lieu of the filing of a new bond, Form 1566, the brewer may furnish a consent of surety, Form 1533, in accordance with § 192.130, extending the terms of the brewer's bond given for the former location to cover operation of the brewery premises at the new location.

(53 Stat. 368, 388, as amended, 392, as amended, 395; 26 U. S. C. 3155, 3250, 3278, 3280)

DERIVATION: T. D. 5769.

§ 192.185 *Changes in premises.* Where the brewery, or brewery bottling house is to be extended or curtailed, the brewer must file with the district supervisor an amended notice, Form 27–C, and amended plat of the premises. If the plans are affected by the extension or curtailment, they must also be amended. The additional facilities covered by an extension may not be used for the proposed purposes, and the portion to be excluded by a curtailment may not be used for other than the previously approved purposes, prior to approval of the notice, Form 27–C.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.186 *Changes in construction and use.* Where a change is to be made in the construction or use of a room, or building, that will affect the accuracy of Form 27–C and plat or plans, the brewer shall first secure approval thereof by the district supervisor pursuant to application, in triplicate, setting forth specifically the proposed changes. Upon completion of the changes, the brewer will comply with the provisions of § 192.188.

DERIVATION: T. D. 5654.

§ 192.187 *Changes in equipment.* Where changes are to be made in brewery or brewery bottling house equipment that affect the accuracy of Form 27–C and plat or plans, the brewer shall first secure approval thereof by the district supervisor pursuant to application, in triplicate, setting forth specifically the proposed changes: *Provided,* That emergency repairs coming under this category of changes may be made without prior approval of the district supervisor. Where such emergency repairs are made, the brewer will file immediately a report thereof, in triplicate, with the district supervisor.

DERIVATION: T. D. 5769.

§ 192.188 *Amended notice and plats or plans.* Where changes have occurred under §§ 192.186–192.187, amended notice and plat or plans will be filed on or before May 1 to reflect the changes made during the preceding calendar year. The district supervisor may require the immediate filing of such documents upon completion of changes that materially affect the accuracy of the existing Form 27–C and plat or plans.

DERIVATION: T. D. 5654.

SPECIAL TAX STAMPS

§ 192.189 *Liability; change in name.* Where there is a change in the corporate name, if a corporation, or firm name, or the brewery is operated under a trade name, or names, the brewer must, within 30 days after such change is made, file with the collector of internal revenue an additional return on Form 11, covering the new corporate name, firm name, or trade name, or names, as the case may be. The special tax stamp, or stamps, must be forwarded to the collector for appropriate notation with respect to such change.

(53 Stat. 388, as amended; 26 U. S. C. 3250)

§ 192.190 *Liability; change in proprietorship.* Where there is a change in proprietorship of the brewery premises, the successor must procure the required special tax stamps: *Provided,* That where a change in proprietorship occurs by reason of the withdrawal of one or more members of a partnership, the special tax stamp, or stamps, may be validated if, within 30 days after the withdrawal, there is filed with the collector of internal revenue an amended return on Form 11 showing the required information regarding the remaining partner or partners. The special tax stamp, or stamps, must also be forwarded to the collector for appropriate endorsement of the change in the partnership.

(53 Stat. 388, as amended; 26 U. S. C. 3250)

DERIVATION: T. D. 5769.

§ 192.191 *Liability; change in location.* Where there has been a change in location, the brewer must, within 30 days after such change is made, file with the collector of internal revenue an amended return on Form 11 covering the new location of the brewery premises; otherwise, new special tax stamps, must be purchased. The special tax stamp, or stamps, must be forwarded

to the collector for endorsement of the change in location.

(53 Stat. 368, 388, as amended, 395, 396; 26 U. S. C. 3155, 3250, 3278, 3280)

DERIVATION: T. D. 5769.

SUBPART L—ACTION BY DISTRICT SUPERVISOR

ORIGINAL ESTABLISHMENT

§ 192.200 *Examination of qualifying documents.* Upon receipt of notice, plat, plans, bond, and other documents required by this part of persons intending to qualify as brewers, the district supervisor will examine the same to determine whether they have been properly executed, and whether they show compliance with the requirements of the law and regulations. Where any required document has not been filed, or where errors or discrepancies are found in those filed, or where the documents filed do not show compliance with this part, action thereon will be held in abeyance until the omission, or material errors or discrepancies, have been rectified, and there has been full compliance with all requirements.

§ 192.201 *Inspection of premises.* When the required documents have been filed in proper form, the district supervisor will assign an inspector to examine the premises, buildings, apparatus, and equipment, and determine whether they conform with the description thereof in the notice, plat, and plans, and whether the construction and measures of protection afforded meet the requirements of the law and this part. Particular attention should be given to the manner in which the brewery is separated from the brewery bottling house as provided in section 192.40.

DERIVATION: T. D. 5769.

§ 192.202 *Report of inspection.* The report of the inspection shall describe separately all irregularities and discrepancies found during the course of the inspection, and shall include a complete statement describing all unusual or special conditions. Where irregularities are corrected during the inspection, the report will indicate the corrections so made. The report need not set out in detail each description as set forth in the notice, plat, and plans. The description of buildings and equipment in the report should be general and brief. However, construction, signs, equipment, etc., which are not in conformity with law and this part, will be completely described. If there are any pipe lines or other connections or openings between the bonded premises and other premises, the same shall be described in detail. There shall be further embodied in the report a statement as to whether or not another business is conducted, or intended to be conducted, on the bonded premises or in buildings thereon.

§ 192.203 *Inaccurate documents.* Where the district supervisor's examination, or the inspector's report, discloses discrepancies in the qualifying documents, the inaccurate or incomplete documents will be returned to the proprietor for correction. A record will be kept of all bonds so returned.



§ 192.204 *Defective construction.* Where it is found that the construction of the brewery or brewery bottling house or the equipment therein does not conform to the requirements of the law and this part, the district supervisor will inform the proprietor concerning the defects, and further action will be held in abeyance pending correction thereof.

DERIVATION: T. D. 5769.

§ 192.205 *Bonds and consents of surety.* All bonds and consents of surety required to be filed by brewers shall be approved or disapproved by the district supervisor.

(53 Stat. 311; 26 U. S. C. 2815)

§ 192.206 *Inquiry by district supervisor.* Before approving any bond or consent of surety given by any individual, firm, partnership, corporation, or association, in respect to the business of a brewer, the district supervisor will cause such inquiry or investigation as may be deemed necessary to ascertain whether such individual, firm, partnership, corporation, or association, or any person owning, controlling, or actively participating in the management of the business has been convicted of, or has compromised, an offense of the nature specified in § 192.134.

(53 Stat. 311; 26 U. S. C. 2815)

§ 192.207 *Approval of bond.* If the district supervisor finds that the person seeking to qualify as a brewer has complied in all respects with the requirements of law and this part, he will note his approval on all copies of the bond, and his approval on all copies of the notice, plat, and plans.

(53 Stat. 311; 26 U. S. C. 2815)

§ 192.208 *Disapproval of qualifying documents.* If the district supervisor finds that the applicant has not complied in all respects with the requirements of the law and this part, or that the individual, firm, partnership, corporation, or association intending to commence business as a brewer, or any person owning, controlling, or actively participating in the management of such business, has been convicted of, or has compromised, an offense of the nature specified in § 192.134, or, if he finds that the situation of the brewery premises is in other respects such as would enable the brewer to defraud the United States, he will disapprove the bond, notice, plat, plan, and other documents.

(53 Stat. 311; 26 U. S. C. 2815)

DERIVATION: T. D. 5769.

§ 192.209 *Appeal to Commissioner.* Where a bond or consent of surety is disapproved by the district supervisor, and an appeal is taken to the Commissioner, the district supervisor will furnish the Commissioner with full information respecting the disapproval, stating the nature of the offense, the names of the offenders, the date of conviction, or the date of acceptance of an offer in compromise, and all other reasons for his action. The Commissioner will grant a hearing in the matter if the parties so request at the time appeal is taken from the action of the supervisor.

(53 Stat. 311; 26 U. S. C. 2815)

§ 192.210 *Disposition of qualifying documents.* Where the bond or consent of surety is approved by the district supervisor, he will forward the original copy of the bond, and the original copy of the notice, plat, plan, and other qualifying documents, together with a copy of all inspection reports, to the Commissioner, one copy of the bond, notice, plat, plans, and other qualifying documents to the brewer and will retain one copy of such qualifying documents for the file of such brewer, and will authorize the brewer to commence operations. The documents returned to the brewer will be filed in proper order and made available for inspection during ordinary business hours. If the bond or consent of surety is disapproved by the district supervisor, all copies thereof shall be returned to the principal, and the surety or sureties shall be notified of such action. The district supervisor will promptly advise the Commissioner fully respecting the disapproval of any bond by him. If the bond or consent of surety has been disapproved, the district supervisor will return all copies of other qualifying documents to the applicant, or brewer.

(53 Stat. 311; 26 U. S. C. 2815)

DERIVATION: T. D. 5654.

§ 192.211 *Special tax stamps.* Upon approval of the notice, plat, and plans and other qualifying documents, the district supervisor will notify the collector of the district in which the brewery premises are located on Form 1411, or otherwise, to insure the payment of special taxes, as required by law and this part. Collectors are not authorized to issue special tax stamps to brewers until such notice has been received from the district supervisor. Supervisors will also notify collectors each year prior to July 1 as to each brewer who is entitled to purchase the special tax stamp for the ensuing year.

(53 Stat. 388, as amended; 26 U. S. C. 3250)

DERIVATION: T. D. 5769.

CHANGES IN NAME, PROPRIETORSHIP, LOCATION, PREMISES, CONSTRUCTION, APPARATUS, OR EQUIPMENT

§ 192.212 *Action concerning changes.* The provisions of sections 192.200–192.211, respecting the action required by district supervisors in connection with the establishment of brewery premises will be followed, to the extent applicable, where there is a change in the name of the brewer, or in firm name, trade name, or style, or in the proprietorship, location, premises, construction, apparatus, and equipment of the brewery or brewery bottling house. Where an application covering changes in the apparatus or equipment, or in the construction or use of the brewery or brewery bottling house, is approved by the district supervisor he will retain one copy of the application and forward one copy to the proprietor and one copy to the Commissioner. Similar disposition will be made of reports received from proprietors covering emergency repairs of

brewery or brewery bottling house apparatus or equipment.

DERIVATION: T. D. 5769.

CONSENTS OF SURETY, AND ADDITIONAL AND SUPERSEDING BONDS

§ 192.213 *Procedure applicable.* The procedure prescribed in this part for the approval and disapproval of notices and bonds submitted in connection with the establishment of brewery premises will, to the extent applicable, govern the approval and disapproval of consents of surety, and additional and superseding bonds.

(53 Stat. 311; 26 U. S. C. 2815)

DERIVATION: T. D. 5769.

SUBPART M—ACTION BY COMMISSIONER; ORIGINAL ESTABLISHMENTS

§ 192.220 *Review of documents.* The Commissioner will review the qualifying documents, and determine that they are properly executed, and in conformity with the requirements of law and this part concerning construction and establishment. If such documents are not in conformity with the above requirements, the Commissioner will return all copies to the district supervisor, with the necessary instructions for correction.

DERIVATION: T. D. 5654.

SUBPART N—TERMINATION OF BONDS

§ 192.225 *Termination of brewer's bond.* The brewer's bond, Form 1566, may be terminated as to future liability (a) pursuant to application by the surety as provided in section 192.226, or (b) pursuant to approval of a superseding bond or discontinuance of business by the principal. Application for termination of a brewer's bond upon approval of a superseding bond or discontinuance of the business, must be filed in duplicate with the district supervisor.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.226 *Application of surety for relief from bond.* A surety on any bond required by this part may at any time in writing notify the principal and the district supervisor in whose office the bond is on file that he desires after a date named, which shall be at least 60 days after the date of the notification, to be relieved of liability under said bond. The notice shall be executed in triplicate by the surety, who shall deliver one copy to the principal and the other two to the district supervisor, who will retain one copy and transmit the remaining copy to the Commissioner. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved, in the case of a brewer's bond, Form 1566, from liability for fermented liquor produced wholly subsequent to the date named in the notice. This notice may not be given by an agent of the surety unless it is accompanied by a power of attorney, duly executed by the surety, authorizing him to give such notice, or by a verified statement that such power of attorney is on file with the Treasury Department.

DERIVATION: T. D. 5005.

§ 192.227 *Action on application for termination of brewer's bond.* When an application for the termination of a brewer's bond as to future liability is filed with the district supervisor in a case where a superseding bond has been approved, or the principal has discontinued business, as provided in § 192.235, the district supervisor will retain one copy of such application and forward one copy to the Commissioner, with his recommendation. The district supervisor will, befor forwarding the application to the Commissioner, make a complete examination of records to determine whether there is any liability then due and payable outstanding against the bond. He will also ascertain from the collector of internal revenue whether there are any outstanding unpaid assessments against the principal. If it is found that violations of law or this part occurred during the period covered by the bond and that penalties incurred or fines imposed have not been paid, or that outstanding assessments, or demands for payment of taxes, chargeable against the bond have not been paid or otherwise settled, no further action will be taken until all such liabilities have been settled.

§ 192.228 *Notices, Forms 1490 and 1491.* Upon approval of the application for termination of a brewer's bond, the district supervisor will execute Form 1490 where a superseding bond has been approved, or Form 1491, where the principal has discontinued business, in quadruplicate (in quintuplicate if there are two sureties), and will forward the original to the Commissioner, one copy to each obligor on the bond, and retain one copy on file with the bond to which it relates.

§ 192.229 *Release of collateral.* The release of collateral pledged and deposited to support bonds required by this part will be in accordance with the provisions of Department Circular No. 154, revised (31 CFR, Part 225), subject to the conditions governing the issuance of notices on Forms 1490 and 1491 of the termination of such bonds. When the district supervisor determines that there is no outstanding liability against the bond, he will fix the date or dates on which a part or all of the security may be released. In fixing such date, which ordinarily will be not less than six months from the date of such determination, the district supervisor will satisfy himself that the interests of the Government will not be jeopardized. At any time prior to the release of such security the district supervisor may, in his discretion and for proper cause, further extend the date of release of such security for such additional length of time as in his judgment may be appropriate.

(40 Stat. 1148, as amended; 6 U. S. C. 15)

SUBPART O—NOTICE OF DISCONTINUANCE OF BUSINESS

§ 192.235 *Form of notice.* Where a brewer desires to discontinue business permanently, he will file with the district supervisor notice thereof on Form 27–C, in triplicate, stating therein the purpose, "Discontinuance of business," and giving the date of the discontinuance. The district supervisor will, when operations have been properly completed, note his approval on the notice, retain one copy and forward one copy to the Commissioner and one copy to the brewer.

DERIVATION: T. D. 5769.

SUBPART P—SPECIAL TAXES

§ 192.240 *Special tax.* Brewers are required to pay, within the calendar month in which they commence operations, the special tax required by section 3250 (c), I. R. C. Special taxes shall become due on the 1st day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case, the tax is reckoned for one year; and in the latter, it is reckoned proportionately from the 1st day of the month in which the liability to special tax commenced, to, and including, the 30th day of June following.

(53 Stat. 388, as amended, 394; 26 U. S. C. 3250, 3271.)

DERIVATION: T. D. 5654.

§ 192.241 *Special tax return.* Persons liable to special tax shall render their return on Form 11 with remittance to the collector of the district in which the business is carried on, at such time within the calendar month in which the special tax liability commenced as shall enable the collector to receive such return and remittance not later than the last day of the month.

(53 Stat. 394; 26 U. S. C. 3272)

§ 192.242 *Execution of Form 11.* The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by an authorized member of the firm; and the return of a corporation shall be signed by an authorized officer thereof. In each case, the person signing the return shall designate his capacity as "individual owner," "member of firm," or in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., will indicate the fiduciary capacity in which they act. When a return is signed by an agent or attorney-in-fact, his signature should be preceded by the name of the principal followed by his title. Returns signed by persons as agents will not be accepted unless they file with the collector a power of attorney, authorizing them so to act. Form 11 must be sworn to before a notary public or other official authorized to administer oaths: *Provided,* That if the form officially prescribed on such return contains therein a provision for verification by a written declaration that such return is made under penalties of perjury, such return shall be verified by the execution of such declaration, and such declaration so executed shall be in lieu of the oath required herein for verification.

(53 Stat. 394, 63 Stat. 667; 26 U. S. C. 3270, 3272, 3809)

§ 192.243 *Wholesale and retail special tax exemption.* A brewer is not required to pay special tax as a wholesale or retail malt liquor dealer if he sells only in the original stamped packages

whether at the place of manufacture or elsewhere, fermented liquors manufactured by him or purchased and procured by him in his own casks or vessels.

(53 Stat. 388, as amended; 26 U. S. C. 3250)

§ 192.244 *Sale of bottled beer.* The special tax liability as brewer does not include the sale of beer in bottles, or the sale of beer produced by other brewers which is not in his own barrels. Brewers who sell such products are required to pay special tax as wholesale or retail malt liquor dealers, or both, according to the quantities sold.

§ 192.245 *Wholesale malt liquor dealer.* Except as otherwise provided, every person who sells, or offers for sale, malt liquors in quantities of 5 gallons or more, to the same person at the same time, and who does not deal in distilled spirits or wines at wholesale, shall be regarded as a wholesale dealer in malt liquors.

(53 Stat. 391; 26 U. S. C. 3254)

§ 192.246 *Retail malt liquor dealer.* Except as otherwise provided, every person who sells, or offers for sale, malt liquors in less quantities than 5 gallons to the same person at the same time, and does not deal in distilled spirits or wines, shall be regarded as a retail dealer in malt liquor.

(53 Stat. 391; 26 U. S. C. 3254)

§ 192.247 *Posting special tax stamp.* The special tax stamp shall be kept conspicuously in the place of business for which it is paid. Accordingly, the stamp shall be posted conspicuously in the place of business of the taxpayer.

(53 Stat. 394; 26 U. S. C. 3273)

§ 192.248 *Sale at purchaser's place of business.* Wholesale and retail dealers in liquors and wholesale and retail dealers in malt liquors, who have paid special tax as such, may, without incurring liability for additional special tax, sell beer, ale, porter, or other similar fermented malt liquors, to wholesale and retail dealers in liquors and wholesale and retail dealers in malt liquors, at the purchaser's place of business covered by appropriate special-tax stamp.

(53 Stat. 392; 26 U. S. C. 3255)

SUBPART Q—TAX ON FERMENTED LIQUORS

§ 192.250 *Beer tax rate.* All beer, lager beer, ale, porter, and other similar fermented liquors, containing one-half of 1 per centum, or more, of alcohol by volume, brewed or manufactured and sold, or removed for consumption or sale, by whatever name such liquors may be called, are subject to the tax prescribed by section 3150 (a), I. R. C. (at the rate specified in Sec. 1650, I. R. C., during the continuance of such rate), for every barrel containing not more than 31 gallons, and at a like rate for any other quantity, or for the fractional parts of a barrel authorized and defined by law, to be collected under the provisions of existing law.

(53 Stat. 365, as amended, 54 Stat. 522, as amended; 26 U. S. C. 3150, 1650)

DERIVATION: T. D. 5654.

§ 192.251 *Barrel sizes.* In computing such tax a barrel is reckoned as containing not more than 31 gallons, and the fractional parts of a barrel are halves, thirds, quarters, sixths, and eighths; and any fractional part of a barrel containing less than one-eighth will be accounted one-eighth; more than one-eighth, and not more than one-sixth, will be accounted one-sixth; more than one-sixth, and not more than one-fourth, will be accounted one-fourth; more than one-fourth, and not more than one-third, will be accounted one-third; more than one-third, and not more than one-half, will be accounted one-half; more than one-half, and not more than 1 barrel, will be accounted 1 barrel; and more than 1 barrel, and not more than 63 gallons, will be accounted 2 barrels, or a hogshead: *Provided*, That if the quantity of fermented liquor exceeds the quantity covered by the tax stamp placed on the barrel, such excess will be disregarded and no tax collected thereon if not more than the following amounts: one-half gallon as to wooden barrels of 31 gallons, and a proportionate quantity as to fractional wooden containers; and one-quarter gallon as to metal barrels of 31 gallons, and a proportionate quantity as to fractional metal containers, except that in the case of metal half barrels placed in use by brewers prior to November 1, 1936, an excess of not more than one-quarter gallon will be disregarded and no tax collected thereon.

(53 Stat. 365, as amended; 26 U. S. C. 3150)

§ 192.252 *Method of tax-payment.* The tax on fermented liquor is required by law to be paid by the owner, agent, or superintendent of the brewery or premises on which it is made, and must be paid by stamp and at the time and in the manner specified by this part. Tax-stamp machines or metering or other devices and apparatus will be used only after regulations specifically prescribing their use have been issued.

(53 Stat. 365, as amended; 26 U. S. C. 3150)

DERIVATION: T. D. 5769.

SUBPART R—MARKS, BRANDS AND LABELS

DERIVATION: T. D. 5739.

§ 192.255 *Barrels and cases.* The name of the manufacturer of the fermented liquor and place of manufacture must be embossed on, or indented in, metal barrels or kegs. The name of the manufacturer and the place of manufacture must be branded by burning on the side, across the staves, and must extend over sixty percent, or more, of the circumference, of wooden barrels or kegs containing fermented liquor. The branding must be of sufficient depth and size so that it may not be scraped from barrels without leaving traces to indicate scraping. The name or trade name of the manufacturer and the place of manufacture (city and state) must be shown on each case or other shipping container for bottled or canned beer. No statement as to payment of internal revenue taxes shall be shown on the shipping container for bottled or canned beer: *Provided*, That where such statement is shown on shipping containers held by a brewer, or by a manufacturer of such containers, on March 1, 1950, the shipping containers may be used by the brewer on and after that date upon filing a notice with the district supervisor setting forth the approximate quantity of the supply and the approximate time required to exhaust the supply.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.256 *Bottles and cans.* Where fermented liquor is bottled or canned on brewery premises, the bottle or can shall show by label or otherwise the name or trade name, the place of manufacture (city and state), the net contents of the container and the nature of the product, such as beer, ale, etc. No statement as to payment of internal revenue taxes shall be shown: *Provided*, That where such statement is shown on labels, bottles or cans held by a brewer, or by a manufacturer of such supplies, on March 1, 1950, the labels, bottles or cans may be used by the brewer on and after that date upon filing a notice with the district supervisor setting forth the approximate quantity of each supply on hand and the approximate time required to exhaust such supply. The labels used by the brewer must be covered by certificates of label approval where required by Regulation 7 (27 CFR, Part 7) issued under the Federal Alcohol Administration Act.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

MORE THAN ONE BREWERY PREMISES OWNED BY THE SAME PERSON

§ 192.257 *Barrels or kegs.* Where two or more breweries are owned and operated by the same person, firm, or corporation, barrels or kegs with the name of the brewer and the location of one or more of such breweries branded or embossed thereon or indented therein may be used for the removal of tax-paid fermented liquor from the premises of all such breweries: *Provided*, That whenever a barrel or keg so branded is filled with tax-paid fermented liquor for removal, a label, showing the location (city and state) of the brewery at which the fermented liquor was produced, is securely affixed thereon. If more than one such brewery is located in the same city, such label shall show the location by street number, city and state.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.258 *Cases.* The place of manufacture (city and state) must be shown on each case: *Provided*, That where two or more brewery premises are owned and operated by the same person, firm, or corporation the cases may show the addresses (city and state) of all of such premises and be used interchangeably

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.259 *Rebranding barrels or kegs.* No wooden barrel or keg which has been rebranded across the staves, and no wooden barrel or keg which has the name of more than one manufacturer branded thereon, may be used by a brewer as a container for fermented liquor: *Provided*, That the removal and replacement of one

or more staves by the brewer whose name and address was originally so branded on a barrel or keg shall not be deemed to be a rebranding: *And provided further,* That where wooden barrels or kegs are sold by one brewer to another, or are sold under court order, the brands on such barrels or kegs may, upon application to, and approval of, the district supervisor, be scraped and the barrels or kegs rebranded by the purchasing brewer, and in the case of metal barrels or kegs, the original marks may be covered by a metal plate so welded into the barrel as to become an integral part thereof. Where a brewer has discontinued business, the successor may comply with the provisions of this section by placing additional marks and brands on the barrels and kegs, in accordance with section 192.255, which indicate the successorship, without removing the marks and brands of the predecessor.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5654.

SUBPART S—STAMPS

§ 192.265 *Tax-paid stamps.* Stamps for the tax-payment of fermented liquor have been provided in denominations suitable for the amount of tax required to be paid on the hogshead, barrels, and halves, thirds, quarters, sixths, and eighths of a barrel of such fermented liquor. Stamps of larger denomination for payment of tax on daily removals of fermented liquor from the brewery bottling house are also provided.

(53 Stat. 365, as amended; 26 U. S. C. 3150)

DERIVATION: T. D. 5769.

§ 192.266 *Application to collector.* Every brewer desiring to obtain stamps denoting payment of the tax on fermented liquors shall first apply to the collector of the district in which his brewery or brewery warehouse is situated. Such stamps shall be sold by collectors only to the brewers of their districts entitled to purchase such stamps, and collectors must keep an account of the number and value of the stamps sold by them to each brewer. If, however, such collector is unable to supply the stamps, the brewer may then apply to the collector of another district, who, upon satisfying himself of the inability of the local collector to fill the order, may furnish the brewer with the desired stamps. Stamps may not be procured by one brewer from another.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

§ 192.267 *Order Form 7.* Collectors shall supply stamps for the tax-payment of fermented malt liquor only upon the written order, on Form 7, in triplicate, of a brewer duly qualified under this part. The collector will enter on all copies of Form 7, the serial numbers of the stamps issued and the date of sale. One copy will be retained by the collector, one copy returned to the brewer, and the remaining copy sent to the district supervisor of the Alcohol Tax Unit. Stamps may be sold to a brewer whose special tax stamp has expired, to be affixed to packages of fermented liquor lawfully manufactured by him in a previous special tax year. Such a brewer, however, will only be competent to sell the liquor thus stamped upon payment of the appropriate dealer's special tax.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

§ 192.268 *Collector's notation on Form 7.* The collector will note on the copies of Form 7 sent to the district supervisor and returned to the brewer the actual date the stamps are delivered, mailed, or expressed to the brewer, in all cases where the actual date of delivery is not the same as the date of the "Paid" rubber stamped impression appearing on the form.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

§ 192.269 *Filing of Forms 7.* The brewer will maintain Forms 7 as a record in his office, accessible to Government officers. District supervisors will file Forms 7 according to names of brewers, arranged by the purchaser's number, which appears on the form. They will compare Forms 7 for each brewer with the brewer's monthly report of stamps bought during the month, as shown on Form 103.

DERIVATION: T. D. 5769.

§ 192.270 *Payment for stamps.* Orders for stamps must be accompanied by cash, post office money order, or certified check, and such stamps will be transmitted by ordinary mail, unless otherwise directed. If ordered to be forwarded by registered mail, money or postage stamps to pay the registry fee must also accompany the order. Stamps may also be forwarded by express at the expense of the taxpayer, but when transmitted by express, or by mail in any manner, it will be at the risk of the party ordering them. Government officers shall not be permitted to carry stamps from the collector's office to the brewer, nor shall Government officers at any other time have custody of uncanceled stamps.

(58 Stat. 912; 26 U. S. C. 3656)

§ 192.271 *Cancellation of stamp.* Unless the Commissioner shall, in any case, authorize the cancellation of stamps in some other manner, the brewer must, prior to affixing the stamp to the package, cancel it by perforating therein the name under which he conducts business, or some suitable abbreviation thereof to be approved by the supervisor, and the date when canceled. If the initials of a brewer are adequate for identification, the supervisor may, in his discretion, approve the use of such initials for the perforation of beer stamps. The date of cancellation may, if preferred, be indicated by numerals, signifying the number of the month, the day of the month, and the last two figures of the number of the current year, as, for example, 3–21–50, meaning March 21, 1950. The perforations must appear on the right or left margin of the stamp at a sufficient distance from the central portion to prevent obliteration of the perforations when the spigot is driven through the stamp.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

§ 192.272 *Perforations required.* Each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined, either (a) by perforations through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (b) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

§ 192.273 *Method of affixing stamp.* At the time any fermented liquor contained in a hogshead, barrel, or keg is removed for consumption or sale from the brewery or brewery warehouse, the brewer must affix centrally upon the spigot hole in the head of every such package an internal revenue stamp denoting the amount of tax required to be paid on such fermented liquor. Fermented liquor intended for bottling elsewhere than on brewery premises must be drawn into packages, which packages must be stamped before removal from brewery premises, and such bottling must be from the stamped package. The procedure prescribed by § 192.280 must be followed in attaching stamps to Forms 139 covering removals of fermented liquor from the brewery bottling house.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

DERIVATION: T. D. 5769.

§ 192.274 *Secure attachment of stamps.* It is important that the tax stamps be secured to the packages in such manner that they cannot be removed without intentional effort. It is, therefore, mandatory that the stamps be affixed in such manner, and by the use of such adhesives, that they cannot be removed without destruction under normal conditions.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

§ 192.275 *Adhesives.* Stamps must be affixed by adhesives in such manner as will prevent their becoming detached by any change in moisture conditions attending the storage, cooling, dispensing, and other handling of the packages. In addition, on metal packages stamps must be further secured by the use of metal crimp rings or other suitable fasteners. If necessary to accomplish this, after the stamps have been affixed they shall be coated with a water repellent material, which must not, however, affect the legibility of the stamps. Where patented bung valves or other mechanical devices are employed, especial care must be taken to provide suitable anchorage to permit affixing the stamps strictly in accordance with these requirements.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

§ 192.276 *Destruction of stamp.* The stamp shall be destroyed by driving through it, at the time the package is tapped, the faucet through which the liquor is to be withdrawn. In case the package is tapped through the other spigot hole (of which there shall be but

two, one in the head and one in the side), the stamp shall be destroyed by driving through it an air faucet in lieu of, but in size equal to, the tap faucet.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

§ 192.277 *Reuse of stamps.* The reuse of fermented liquor stamps is prohibited by law, and a stamp once affixed to a package cannot legally be removed and applied to another. The used stamp must be carefully and completely scraped off and the tacks, if any, withdrawn, before a new stamp is affixed. If the contents of a package of fermented liquor returned to a brewer are withdrawn therefrom, or in any manner changed, the stamp on such returned package must be destroyed.

(53 Stat. 371, as amended; 26 U. S. C. 3159)

§ 192.278 *Single stamp on packages.* The affixing to a package of two or more stamps having an aggregate face value equal to the amount of tax due thereon is not compliance with the provisions of law concerning the stamping of packages of fermented liquor. The tax on each package must be represented by a single stamp of the proper denomination, duly canceled and affixed upon the spigot hole in the head of the package.

(53 Stat. 366, as amended; 26 U. S. C. 3152)

§ 192.279 *Untax-paid beer.* Fermented liquor which has been sold or removed for consumption or sale from the brewery premises without payment of the required tax is liable to seizure and forfeiture. The absence of the proper whole tax stamp from any hogshead, barrel, or keg containing fermented liquor, after its sale or removal for consumption or sale from the brewery where it was made, or brewery warehouse, is prima facie evidence of the nonpayment of the tax.

(53 Stat. 371, as amended; 26 U. S. C. 3159)

DERIVATION: T. D. 5769.

§ 192.280 *Beer removed from bottling house.* Sufficient stamps must be on hand to cover the tax-payment of all fermented liquor before its removal for consumption or sale from the brewery bottling house. The amount of beer removed tax-paid from the brewery bottling house shall be reported on Form 139 in accordance with the requirements of § 192.441. At the time of making his return on Form 139 the brewer shall cancel, to the nearest one-eighth barrel, beer stamps corresponding to the quantity of beer removed for a taxable purpose. In determining the nearest one-eighth barrel, a fraction amounting to one-sixteenth barrel or more will be considered as the next higher one-eighth and a fraction amounting to less than one-sixteenth barrel will be disregarded. The stamps will be canceled in the manner prescribed for the cancellation of stamps for barrels, or kegs of fermented liquor. The brewer will attach the canceled stamps to Form 139 to be delivered to any inspector. The tax on the beer will be computed in accordance with § 192.281.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.281 *Tax table computations, cases in barrel equivalents.*

| Number of bottles or cans per case | Fluid contents (ounces) of each bottle or can | Barrel equivalent |
|---|---|---|
| 4 | 64 | 0.06452 |
| 6 | 64 | .09677 |
| 12 | 6 | .01815 |
| 12 | 7 | .02117 |
| 12 | 8 | .02419 |
| 12 | 12 | .03629 |
| 12 | 14 | .04234 |
| 12 | 30 | .09073 |
| 12 | 32 | .09677 |
| 24 | 6 | .03629 |
| 24 | 7 | .04234 |
| 24 | 8 | .04839 |
| 24 | 9 | .05444 |
| 24 | 10 | .06048 |
| 24 | 11 | .06653 |
| 24 | 12 | .07258 |
| 24 | 13 | .07863 |
| 24 | 14 | .08468 |
| 24 | 15 | .09073 |
| 24 | 16 | .09677 |
| 36 | 6 | .05444 |
| 36 | 7 | .06351 |
| 36 | 8 | .07258 |
| 48 | 12 | .14516 |

Since the determination of tax liability is based upon a count of cases of bottles or cans, only bottles or cans of uniform size and content may be packaged in the same case or other shipping container: *Provided,* That due to conditions which make it impracticable to separate seven ounce bottles from eight ounce bottles or eleven ounce bottles from twelve ounce bottles, (a) an indiscriminate mixture of seven and eight ounce bottles of beer may be packaged in the same case and a barrel equivalent of 0.04536 used in determining the amount of tax due on a case containing 24 bottles, and (b) an indiscriminate mixture of 11 and 12 ounce bottles of beer may be packaged in the same case and a barrel equivalent of 0.06956 used in determining the amount of tax due on a case containing 24 bottles. If beer is to be removed in cases of sizes other than those shown above, the brewer will notify the district supervisor in advance and request to be advised of the proper fractional barrel equivalent of the proposed container.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.282 *Personal delivery of Forms 139.* A brewer, or his authorized agent, may, in person, deliver Forms 139, prepared in triplicate, with canceled stamps attached to one copy, to a designated inspector at the office of the district supervisor. When Forms 139 and the canceled stamps are so delivered, the inspector, having satisfied himself by an inspection of the stamps, that they are sufficient to cover the tax due on the bottled beer removed from the brewery bottling house tax-paid, as indicated by Form 139, and that they have been properly canceled by the brewer, will, in the presence of the brewer, or his authorized agent, further cancel and deface the stamps so delivered in such manner as to cut from the center of each stamp a piece thereof not less than one-half inch square, and will prepare three copies of Form 138 and sign the receipt thereon for the stamps. One copy of Form 138 and one copy of each Form 139 with the canceled stamps attached will be transmitted by the inspector to the bonded accounts division of the supervisor's office. Two copies of Form 138 and of each Form 139 will be delivered to the brewer. One copy of each form will be retained by the brewer as a part of his permanent records and will be kept available for inspection by Government officers. The remaining copy of each Form 139 will be attached to and submitted with the monthly record, Form 103. The remaining copy of Form 138 will be retained by the brewer until the arrival of a Government officer at the brewery and will then be delivered to him for filing in the Government cabinet.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.283 *Sheets of stamps kept intact.* Brewers will avoid, as far as practicable, submitting individual beer stamps to inspectors. Sheets of stamps, as issued by the collector of internal revenue, should, where possible, be kept intact. By proper folding, all stamps comprising the sheet may be simultaneously perforated by the brewer, and the same procedure followed by inspectors at the time the stamps are further canceled and defaced. Stamps of the larger denominations should be used to facilitate handling and examination.

## SUBPART T—REMOVAL OF BREWER'S YEAST AND OTHER ARTICLES

§ 192.290 *Containers and records.* Brewer's yeast, in liquid or solid form containing not less than 10 percent solids (as determined by the methods of analysis of the American Society of Brewing Chemists), may be removed from the brewery in barrels, tank wagons, or other suitable containers, or by pipe line. If removed in containers, the containers must bear labels giving the name and location of the brewery, and the words "Brewer's Yeast." If removed by pipe line, the pipe line will be indicated on the plat and described in the Form 27–C, and the premises receiving the product will be subject to inspection by Government officers during ordinary business hours. The brewer must keep records open for inspection by Government officers showing the quantity and date of removal, and the name and address of the consignee. Brewer's yeast may be removed for sale to other brewers for use in the manufacture of beer and to other concerns (including off-premise plants of brewers) for the preparation of stock foods and medicinal products, or for any other legitimate purposes.

(53 Stat. 371, as amended; 26 U. S. C. 3158)

DERIVATION: T. D. 5654.

§ 192.291 *Malt sirup.* Records shall be kept by the brewer of all malt and malt sirup removed from the brewery. Such records must show the quantity of each lot removed, together with the name and address of the person to whom shipped or delivered. The records must be available for inspection by Government officers.

(53 Stat. 371, as amended; 26 U. S. C. 3158)

DERIVATION: T. D. 5654.

SUBPART U—REMOVAL OF BEER FROM BREWERY TO WAREHOUSE

§ 192.295 *Permit.* Upon the filing with the district supervisor of an application therefor by a brewer, a permit may be granted to remove or transport from his brewery to a depot, warehouse, or other place used exclusively for storage or sale in bulk, and occupied by him, malt liquor of his own manufacture, known as lager-beer, in quantities of not less than 6 barrels; and any other malt liquor of his own manufacture, in quantities of not less than 50 barrels at a time, without affixing the proper stamps on the containers of such malt liquors at the brewery.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.296 *Application for permit.* The application of the brewer for permit to remove malt liquors from the brewery to a depot or warehouse shall be in the following form:

_____, 19____

To the DISTRICT SUPERVISOR,
_____ *District,*
_____, _____.

The undersigned, occupying a depot or warehouse for the storage and sale of beer at _____, in the city of _____, county of _____, and State of _____, in the _____ supervisory district, hereby applies for necessary permits to remove _____ barrels of _____ from his brewery to his place of storage and sale aforesaid, without affixing stamps thereto.

The quantity of fermented liquors now at said brewery is as follows: [quantity stated here]; and quantity of same at said depot or warehouse is as follows: [quantity at warehouse stated here].

(Signed) _____
(Brewer)

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.297 *Receipt for permits.* Upon receipt of such application, the supervisor may issue the required permits to be affixed to the containers of the fermented liquor to be removed and deliver the permits to the applicant who shall furnish his receipt therefor in the following form to be attached to the application:

_____, 19____

Received this day from _____, Supervisor of the _____ District, permits numbered as follows: _____ to _____, both serial numbers inclusive, which are to be immediately affixed to the barrels of _____ for removal as specified in my application dated _____, 19____.

(Signed) _____
(Brewer)

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.298 *Form of permit.* The permit authorizing such removal must be affixed to every such barrel or container prior to removal to the depot or warehouse, and shall be in the following form:

BREWER'S PERMIT

Serial No. _____

OFFICE OF THE DISTRICT SUPERVISOR,
_____ DISTRICT,
_____
(Date)

Permission is hereby granted for the removal of this _____ of _____ from brewery of _____, in this district to _____ warehouse at _____, _____ in the _____ supervisory district.

_____
(District Supervisor)

_____
_____
(Brewer)

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.299 *Affixing and canceling permit.* The brewer, upon receiving the permits, shall at once securely affix them to the heads of the barrels or containers near the chime and immediately under the bung stave. At the time the permit is affixed, the brewer shall cancel it by perforations in the same manner as is required in canceling stamps denoting payment of tax upon fermented liquors. As soon as the permits are affixed, and within five days after their delivery to the brewer, he will notify the supervisor in order that the supervisor may record the date of affixing on the duplicate copies of such permits retained in his office.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.300 *Permits covering transit to warehouse.* Permits affixed to the barrels or containers are intended merely to protect the fermented liquor while in transit from the brewery to the warehouse. Any package found out of the warehouse under permit at any time after it should have been in warehouse may be detained, and the claimant required to prove absence of fraudulent intent.

(53 Stat. 371, as amended; 26 U. S. C. 3159)

§ 192.301 *Removal of packages to another district.* The supervisor upon issuing permits for the removal of such fermented liquors to another supervisory district shall promptly and fully inform the supervisor of the supervisory district into which said liquors are to be removed in regard to the issuance of said permits. The supervisor issuing such permits shall also notify the collector of internal revenue of the collection district into which the removal is to be made.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.302 *Notice to supervisor.* The brewer shall promptly notify the supervisor and the collector, of the district into which the removal is made, of the receipt at the depot or warehouse of such fermented liquors.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.303 *Stamping containers.* After storage of such fermented liquors in said depot or warehouse, and upon removal therefrom, the manufacturer thereof shall stamp the containers in the same manner and under the same penalties and liabilities as required for the stamping thereof at the brewery. The collector of the district in which said depot or warehouse is situated will furnish the manufacturer with stamps for the stamping of same, as if said fermented liquors had been manufactured in his district.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.304 *Destruction of permit.* The permit issued by the supervisor authorizing such barrel or other container to be removed from the brewery, must remain affixed until the packages are withdrawn from said depot or warehouse, at which time the permit shall be scraped off and completely destroyed, and the tax-paid stamp properly affixed.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.305 *Entry on Form 103.* Brewers will enter all fermented liquors removed to other collection districts under permits, on Form 103. Fermented liquors removed without stamps to warehouse in the supervisory district in which manufactured will be considered a part of the stock "on hand" in the brewery.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.306 *Record of shipments to another district.* Where the removal is to a warehouse in another supervisory district, the brewer will make monthly returns, in duplicate, on a separate Form 103, to the supervisor of such district, showing the quantity so received and the disposition of same, as well as the number of stamps of various denominations purchased, used, and on hand at the beginning and end of the month. One copy of the return will be retained in the supervisor's office, and the other will be forwarded to the Commissioner.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.307 *Inspector's Report, Form 138.* Fermented liquor which is to be transferred to a depot or warehouse under permit, must be racked into packages under the supervision of an inspector designated for that purpose. The inspector shall take the reading of the continuous counter of the meter before, and after, the racking operation and submit a report on Form 138 with the notation "For removal without stamps to the depot or warehouse located at_____ _____," together with the serial numbers of the permits.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

SUBPART V—REMOVALS TO CONTIGUOUS ALCOHOL PLANTS

DERIVATION: T. D. 5769.

§ 192.310 *Beer removed to contiguous alcohol plants.* Beer, ale, porter, or other fermented liquor to be used as a distilling material may be conveyed by pipeline without taxpayment from the brewery where produced to an industrial alcohol plant contiguous to the brewery premises.

(53 Stat. 358; 26 U. S. C. 3104)

DERIVATION: T. D. 5769.

§ 192.311 *Brewery premises and alcohol plant separate.* The premises used as a brewery and the premises used as an industrial alcohol plant must be separate and distinct. The industrial alcohol plant must be qualified and constructed as prescribed in Regulations 3 (26 CFR Part 182). If the industrial alcohol plant is in a portion of a building in which the brewery premises are situated or in a separate building immediately adjoining a brewery or brewery bottling house building, there must be a complete separation by substantial unbroken partitions between the same

from cellar to roof, on the lines of the premises on all floors, with the exception only that necessary openings will be permissible to allow the conveyance of fermented liquor, water, and carbon dioxide gas by pipes, and to permit the use of the same heat, light, and power plants in the conduct of both industries. Necessary openings will also be permitted in such partitions for the passage of pipes for the return of the residue after distillation for finishing as cereal beverage containing less than one-half of 1 percent of alcohol by volume on the brewery premises.

(53 Stat. 358; 26 U. S. C. 3104)

DERIVATION: T. D. 5769.

§ 192.312 *Measuring tanks.* Necessary measuring tanks, with a 24-hour capacity for each, must be provided, either in the brewery or industrial alcohol plant, for the determination of the quantity of fermented liquor transferred, and records must be made thereof at the brewery and at the industrial alcohol plant. Such measuring tanks must be calibrated and provided with suitable measuring device and the outlet equipped for Slaight locks. A separate meter may be provided in lieu of measuring tanks.

(53 Stat. 358; 26 U. S. C. 3104)

§ 192.313 *Cereal beverage.* The residue, which is to be used in making cereal beverage containing less than one-half of 1 percent of alcohol by volume, may be transferred from the industrial alcohol plant premises to the brewery by means of unstamped packages unlike those ordinarily used for containing fermented liquor. If like packages are used, they must be equipped in the manner required in cases where fermented liquor packages are used for containing nontaxable beverages removed from brewery. Such residue may be transferred from the industrial alcohol plant to the brewery for reconditioning by way of a separate pipeline, which may be connected in the brewery with a tank, or tanks, set aside for that purpose exclusively. Any such residue removed from the industrial alcohol plant premises to the brewery for completion of the process must be kept separate and distinct from the taxable product, and if the same apparatus is to be used for completing the process it must be used at separate and distinct times for the two products. Pipes for conveying such residue of less than one-half of 1 percent of alcohol by volume passing over the brewery premises must be open to inspection throughout their entire lengths.

(53 Stat. 358; 26 U. S. C. 3104)

DERIVATION: T. D. 5769.

§ 192.314 *Production report.* The fermented liquors conveyed to a contiguous alcohol plant shall be reported as produced by the brewer and so entered on his record (Form 103).

(53 Stat. 358; 26 U. S. C. 3104)

§ 192.315 *Records.* Credit shall be taken on record (Form 103) for the quantity of fermented liquor removed as distilling material. At the industrial alcohol plant the materials received from the brewery for distillation shall be taken up on Form 1442, which must be kept for that purpose. The residue returned from the industrial alcohol plant premises to the brewery for finishing shall be accounted for as received, on Form 66.

(53 Stat. 358; 26 U. S. C. 3104)

DERIVATION: T. D. 5769.

§ 192.316 *Supervision by storekeeper-gauger.* The storekeeper-gauger assigned to supervise the operations of the industrial alcohol plant will also supervise the removal of the fermented liquor from the brewery to such industrial alcohol plant.

(53 Stat. 358; 26 U. S. C. 3104)

## SUBPART W—REMOVAL OF SOUR BEER

§ 192.320 *Sale of sour beer.* When fermented liquor has become sour or damaged, so as to be incapable of use as such, brewers may sell it for manufacturing purposes. They may remove such liquor in casks, or other vessels, unlike those ordinarily used for packaging fermented liquors, and containing, respectively, not less than one barrel each. The nature of the contents shall be marked on such casks or other vessels, and the permit or stamp required by law or this part need not be affixed thereto.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.321 *Inspection prior to removal.* Prior to removal of sour or damaged fermented liquor, the brewer shall apply to the district supervisor for permission so to do, stating the quantity, type, and proposed disposition of the liquor. The supervisor, before granting permission for removal, will asign an inspector to visit the brewery, identify and inspect the spoiled fermented liquor, and secure samples for submission to the Government chemist. If the chemist's report of analysis shows the liquor to be incapable of use as such, the supervisor will notify the brewer in writing that it may be removed and disposed of.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.322 *Entry on Form 103.* Sour or damaged fermented liquor shall be removed from the brewery without passing through the meter and racking machine, but proper credit entry therefor must be made in the summary on Form 103.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.323 *Reuse of stamp.* The statute authorizing removal and sale of sour or damaged beer from a brewery without attaching stamps to the packages does not confer the privilege of removing a stamp from a package for reuse in the case of beer soured or spoiled if a stamp has been attached. A stamp once applied to a package may not be removed and applied to another package. No refund can be made of money paid for stamps once affixed to packages of beer which have soured after removal of the packages from the brewery.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

## SUBPART X—TAX-PAID BEER RETURNED TO BREWERY PREMISES

DERIVATION: T. D. 5769.

§ 192.330 *Barrels and kegs; temporary storage.* Undelivered beer in stamped barrels or kegs returned to a brewery may be held in temporary storage. Such beer must be kept completely segregated from all other beer, identified as returned beer, and be immediately accessible for examination by Government officers. The stamps on barrels or kegs of returned beer must remain intact while in temporary storage. Entry will not be made on Form 103 for beer returned in stamped barrels or kegs while in temporary storage. The beer may be held in the brewery for not more than 5 days for refrigeration, after which it must be the first beer of its kind, type, and container size removed. Unless so removed the beer will no longer be considered as being in temporary storage and the stamps on the barrels or kegs must be destroyed. When such beer is returned to brewery stock, the quantity thereof will be entered on Form 103, with a notation explaining the item as "Undelivered Bulk Beer Returned to Brewery Stock." New stamps must be affixed if the beer is again removed from the brewery.

(53 Stat. 371, as amended; 26 U. S. C. 3158)

DERIVATION: T. D. 5769.

§ 192.331 *Barrels and kegs; used as materials.* Undelivered beer returned to the brewery in stamped barrels or kegs may be used as materials instead of being returned to stock. The quantity of beer so used for materials must be entered on Form 103 as "Materials Received," in one of the unused columns, the heading of which should be marked "Returned Beer Salvaged." Entry shall also be made in an unused column which should be headed "Salvaged Beer" under the heading of "Materials Used," stating the quantity in barrels, as well as the balling. The stamps on the barrels or kegs of returned beer to be used as materials must be destroyed.

(53 Stat. 371, as amended; 26 U. S. C. 3158)

DERIVATION: T. D. 5769.

§ 192.332 *Barrels and kegs; stamp account.* Deductions or other entries shall not be made in the stamp account on Form 103 in any instances where undelivered beer is returned to stock or used for materials in the production of beer. No refund or credit will be allowed for stamps destroyed.

(53 Stat. 371, as amended; 26 U. S. C. 3158)

DERIVATION: T. D. 5769.

§ 192.333 *Undelivered tax-paid bottled beer.* The provisions of § 192.33, relative to the storage of tax-paid bottled beer, shall not be construed as prohibiting the return to and temporary holding of undelivered tax-paid bottled beer in the brewery bottling house or in trucks or other vehicles on the brewery premises. Undelivered tax-paid bottled beer held temporarily in the brewery bottling house must be kept completely segregated from all other beer, be

identified as tax-paid beer, and be immediately accessible for examination by Government officers. Records maintained at the brewery bottling house must show the aggregate quantity of undelivered beer returned to the premises each day and the quantity remaining on hand. The record must be supported by credits against loading slips or similar commercial papers. Entry will not be made on Form 103 for undelivered tax-paid bottled beer temporarily held on the brewery premises. Such undelivered beer must be the first beer of its kind, type, and container size removed from the premises. Unless so removed the beer will no longer be considered as being held temporarily and must be returned to brewery bottling house stock, the quantity thereof entered on Form 103 with a notation explaining the item as "Undelivered bottled beer returned to brewery bottling house stock." No refund or credit will be allowed for the tax paid on bottled beer returned to the brewery bottling house stock. Deductions or other entries shall not be made in the stamp account on Form 103 in any instance where such undelivered beer is returned to stock. Tax-paid bottled beer loaded preparatory to delivery on the same or the following business day may be held in trucks or other vehicles on the brewery premises.

DERIVATION: T. D. 5769.

§ 192.334 *Recasing or relabeling; application.* A brewer desiring to receive tax-paid bottled beer for recasing or relabeling in the brewery bottling house must file an application, in triplicate, with the district supervisor, who will upon receipt of the application detail an officer to supervise the receipt, recasing or relabeling and removal of the tax-paid beer: *Provided,* That such application may be submitted directly to an inspector at the brewery premises, who may thereupon supervise the operation. The tax-paid beer must be recased or relabeled promptly after receipt on the brewery bottling house premises, be kept apart from all other beer, and be immediately removed from the bottling house premises after completion of the recasing or relabeling. If a brewer desires to hold small quantities of beer returned for recasing or relabeling until a sufficient quantity has been accumulated for economical handling, or if it is not otherwise feasible to recase or relabel returned beer immediately, such beer must be held in off-premises storage. The application should set forth the approximate quantity of tax-paid beer to be recased or relabeled and the date on which the brewer desires to receive the beer for such reconditioning. No entry of the quantity of beer so received and disposed of shall be made in the monthly record, Form 103.

DERIVATION: T. D. 5769.

§ 192.335 *Recasing or relabeling; action by inspector.* Upon supervising the receipt, recasing or relabeling and removal of the returned tax-paid bottled beer pursuant to the brewer's application, the inspector will enter on all copies of the application, or an appendage thereto, the date of the operation and the quantity of beer involved. The inspector will return one copy of the completed application to the brewer for inclusion in his permanent file, forward one copy to the district supervisor and place the remaining copy in the Government cabinet on the brewery premises.

DERIVATION: T. D. 5769.

§ 192.336 *Recasing or relabeling; return to stock.* If tax-paid bottled beer is returned to the brewery bottling house for recasing or relabeling and the provisions of § 192.334 are not complied with, the beer must be returned to brewery bottling house stock and the quantity thereof entered on Form 103 with a notation explaining the item as "bottled beer returned to brewery bottling house stock." No refund or credit will be allowed for the tax paid on bottled beer so returned. Deductions or other entries shall not be made in the stamp account on Form 103 in any instance where such beer is returned to stock.

DERIVATION: T. D. 5769.

§ 192.337 *Destruction of tax-paid bottled beer.* Tax-paid bottled beer may be returned to the brewery bottling house for destruction and the salvaging of bottles or shipping containers. Tax-paid bottled beer temporarily held in the brewery bottling house for destruction must be completely segregated from all other beer, be identified as beer returned for destruction, and be immediately accessible for examination by Government officers. No refund or credit will be allowed for the tax paid on beer returned to the brewery bottling house for destruction. Immediately upon receipt, the quantity of beer must be taken into account in the "Statement of Transactions in Fermented Liquor" on Form 103, and upon destruction an entry of the quantity involved must be made in the same statement. The entries will be identified as "Beer returned for destruction" and "Returned beer destroyed," respectively. Similar special entries must be made in the "Fermented Liquor Summary" on Form 103. Destruction of the beer may be effected only in accordance with the provisions of §§ 192.448–192.450.

DERIVATION: T. D. 5769.

§ 192.338 *Daily record.* Brewers shall keep a daily record of all packages filled with fermented liquor and cereal beverage transferred through the racking meter; the number of packages of each size tax-paid and removed from the brewery; the quantity of untax-paid draught beer and the quantity of untax-paid bottled beer set aside for consumption on the brewery premises; the quantity of tax-paid beer returned to the brewery as stock or for use as brewing material; and the quantity of untax-paid beer representing unstamped leaking packages returned to the brewery. This record shall be maintained for ready examination by Government officers at any time within the succeeding four years.

DERIVATION: T. D. 5769.

## SUBPART Y—EXPORTATION, FREE OF TAX, OF FERMENTED MALT LIQUOR

§ 192.340 *Exportation free of tax.* Fermented liquor may be removed from the place of manufacture or storage for export to a foreign country free of tax. Shipments to the Panama Canal Zone have the same status as exportation to foreign countries. The law provides for shipment of fermented liquor without payment of tax to Puerto Rico, Guam, American Samoa, and the Virgin Islands of the United States. The provisions of this part, and the forms prescribed, in respect to the removal of fermented liquor, free of tax, for exportation to foreign countries, apply to like removals and shipments to Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, and the Panama Canal Zone. Beer shipped to other possessions of the United States must be tax-paid upon removal from the brewery premises. Hawaii and Alaska are Territories of the United States, and fermented liquor withdrawn for shipment to those territories must be tax-paid upon withdrawal from the brewery premises.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.341 *Exportation defined.* An exportation is a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. The export character of any shipment will be determined by the intention with which it is made, and it assumes an export character only when destined for use in a foreign country. Proof of landing in a foreign country is required. In case any fermented malt liquor which has been removed without the payment of tax under this part is used on the exporting vessel, as ship's stores, or on the exporting vehicle, the shipment will not be regarded as a bona fide exportation. In every case where a shipment is made, which is not a bona fide exportation, the tax due thereon will be assessed.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.342 *Removed for export.* The quantity of beer removed for exportation in kegs or barrels or in bottles or cans pursuant to an approved Form 1689 will be entered on Form 103 in accordance with the requirements of that form. Beer so removed may not be returned to the brewery premises unless authorized under the provisions of § 192.356 or § 192.363.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.343 *Export bond, Form 263.* Brewers desiring to export fermented liquor without payment of tax shall be required to furnish the supervisor of the district in which the brewery premises are located a bond, in triplicate, on Form 263 with acceptable corporate surety, individual surety, or collateral. Bond, Form 263, must be filed with the district supervisor prior to the filing of the first

application and entry for withdrawal for exportation on Form 1689.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.344 *Penal sum.* The penal sum of the bond must be sufficient to cover the estimated amount of tax which will at any time constitute a charge against the bond: *Provided*, That the penal sum of any such bond shall not exceed $25,000 nor be less than $1,000. The bond shall be a continuing one, and the liability thereof subject to increase as successive withdrawals are made thereunder and to decrease as evidence of exportation, required in this part, is received by the district supervisor. When the limit of liability under a bond given in less than the maximum penal sum has been reached, no further withdrawals may be made unless prior liabilities have been decreased by the receipt, by the district supervisor, of evidence of exportation, as required in this part, or a new or additional bond in a sufficient penal sum is furnished.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.345 *Bond procedure.* The procedure governing the execution, approval, and disposition of the original and copies of brewers' bonds, Form 1566, as provided in this part, shall, so far as applicable, apply to the execution, approval, and disposition of export bonds, Form 263.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.346 *Marks on containers.* In addition to the marks and brands prescribed in § 192.255, each keg, barrel, case, crate, or other package containing fermented liquor to be exported under the provisions of this part, without the payment of tax, must plainly and legibly show the words "Fermented Liquor for Export—Lot No. ------" in letters and figures of not less than three-fourths of an inch in height. The lot number assigned must correspond with the brewer's serial number of the Form 1689.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.347 *Consignment to collector of customs.* Every shipping container of fermented malt liquor destined for foreign countries or the insular possessions beyond the territorial waters of the United States must be consigned to the collector of customs at the port of exportation, and the brewer should notify his agent of such shipment. Where such containers are destined to contiguous foreign territory the shipments shall be consigned to the foreign consignee at destination and must be marked in care of the collector or deputy collector of customs at the border port of exit.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.348 *Supervisor's account with brewer.* The supervisor shall keep an account with each brewer covering the exportation of fermented liquor which shall show the following:

(a) The name and address of the brewery;

(b) Date of approval of application, Form 1689;

(c) Amount of tax liability involved in such exportation;

(d) The name of foreign purchaser;

(e) Date, term, and penal sum of export bond; and

(f) The amount of tax liability debited and credited against the bond.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.349 *Details on Form 1689.* Each application on Form 1689 will be given a serial number by the brewer, beginning with number 1. On July 1 of each year, he shall begin a new series, commencing with number 1. The details required by the application must be filled in completely and legibly by the brewer. The name of the carrier—that is, vessel or vehicle on which shipment will be carried from the exterior limits of the United States—unless known to the brewer, will be filled in by the agent or the brewer at the port of exportation, who will sign the request for customs inspection as exporter.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5654.

§ 192.350 *Application Form 1689.* After acceptance of the prescribed bond by the district supervisor, the principal named therein shall file with the district supervisor for the district in which the brewery premises are located, for each intended withdrawal, an application for withdrawal (and entry for exportation) on Form 1689, in triplicate. The brewer will also make one copy of Form 1689 to be retained by him.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.351 *Action by district supervisor.* Upon receipt of each application the district supervisor will, if the tax liability thereon will not increase the outstanding liability beyond that covered by the export bond, enter his approval on each copy of Form 1689, and return two copies to the brewer.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.352 *Change in consignee.* Where, after approval of the application on Form 1689, but before removal, the brewer, for good and sufficient reasons, desires to change the name and address of the consignee, he will forward all copies of Form 1689 with a letter to the district supervisor, for correction, endorsement, and return. Where a change of consignee is desired after removal of the fermented liquor, the district supervisor may, upon application, authorize such change and notify the appropriate collector of customs.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.353 *Immediate exportation.* Fermented liquor covered by an approved Form 1689 may be removed from the brewery premises only for immediate exportation. Any such liquor found stored elsewhere except as provided in this subpart will be liable to seizure and forfeiture.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.354 *Delay in exportation.* In case any shipment is not removed from the brewery premises for exportation within 20 days after the district supervisor's approval of the application on Form 1689, the brewer must advise the district supervisor by letter as to the probable date of removal for export. If the order for the shipment has been canceled he will so state and return all copies of Form 1689 for cancellation.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.355 *Delivery to carrier.* The brewer, upon removal of a shipment for export, will deliver such fermented liquor either to the carrier or directly for customs inspection. If the place of manufacture is located at the port of exportation, he will deliver the shipment directly for customs inspection and supervision of lading, and will promptly forward a copy of the export bill of lading to the district supervisor. If the place of manufacture is located elsewhere than at the port of exportation, he will deliver the shipment to the carrier for transportation to the port of exportation, and procure one copy of the bill of lading covering such transportation, which he will promptly forward to the district supervisor of the district from which the shipment was made.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.356 *Return of shipment.* A brewer who desires to return an export shipment to his place of manufacture must make application to the supervisor of the district from which the shipment was made for permission so to do, stating his reasons and shall identify the shipment by serial number of Form 1689 and date of approval thereof, recite where it has been since it left the brewery premises, and give the name and address of the custodian. Upon return of a shipment to the brewery premises pursuant to permission granted by the district supervisor, the quantity of fermented liquor will be taken into account in the brewer's monthly record, Form 103, by means of a special debit entry. All copies of the export application, Form 1689, covering the shipment should be marked "Cancelled—Returned to Brewery" or if bottled or canned fermented liquor is involved "Cancelled—Returned to Bottling House," followed by the date of the letter authorizing such return. Credit for fermented liquor so returned should be given by the district supervisor in the brewer's export bond account.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.357 *Exportation through border port.* In case of exportation through a border port to contiguous foreign territory, the bill of lading will cover transportation to the foreign destination, and must show the routing,

particularly the carrier which will deliver the shipment for customs inspection at the border; also that shipment was sent in care of the collector of customs or deputy collector of customs at the border port: *Provided*, That where a through bill of lading is not obtainable, separate bills of lading covering the shipment from the place of manufacture to the border port and from the border port to the foreign destination will be procured. A copy of the through bill of lading, or copies of the separate bills of lading, as the case may be, will be transmitted by the brewer or his agent immediately by letter to the supervisor of the district from which the shipment was made, for attachment to the copy of application and entry, Form 1689.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5654.

§ 192.358 *Form 1689 completed by brewer.* Upon removal of the shipment from the brewery premises, the date of removal shall be entered by the brewer on all copies of Form 1689, held by him.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.359 *Form 1689 filed with collector of customs.* If the place of manufacture is located at the port of exportation, the brewer shall retain one copy and file with the collector of customs of said port, at least six hours prior to lading, two copies of the application and entry on Form 1689. One copy will be treated as the customs entry, and the other copy will be disposed of as provided in this subpart.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5654.

§ 192.360 *Shipment by vessel.* If the place of manufacture is located elsewhere than at the port of exportation, and the shipment is to be exported by vessel immediately, the brewer shall forward a copy of the transportation bill of lading as provided by § 192.355, and a copy of the export bill of lading to the supervisor of the district from which the shipment was made, for attachment to the copy of Form 1689 retained by him. He will also forward two copies of the Form 1689 to his agent at the port of exportation. The two copies of the Form 1689 must reach the agent in sufficient time for him to file them with the collector of customs of the port at least six hours prior to lading. The agent shall see that the name of the exporting vessel is properly entered in the Form 1689 giving the location of the pier where it will be laden, and shall subscribe his name as agent for the exporter.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5654.

§ 192.361 *Shipment to contiguous foreign territory.* In case of exportation to contiguous foreign territory by rail through a border port, the brewer shall retain one copy of the Form 1689 and forward two copies thereof immediately to the collector of customs of the border port through which the shipment will be routed for exportation. A copy of the bill of lading will be forwarded to the district supervisor as provided by § 192.357.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5654.

§ 192.362 *Delay in lading.* Upon arrival at the port of exportation of the fermented liquor described in an export entry, if the vessel from any cause is not prepared to receive the same, such liquor may be permitted, with the consent of the transportation company, to remain in its custody for a period not exceeding 30 days until released by permit issued by the collector of customs. Storage elsewhere for like cause and not exceeding the same period must be approved by the collector of customs.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.363 *Return to brewery premises.* In the event of any further delay, the facts shall be reported to the supervisor of the district from which the shipment was made. Unless he approves an extension, he will request the collector of customs to release the fermented liquor for immediate return to the place of manufacture. Upon return of the shipment to the brewery premises, the fermented liquor must be taken into account, all copies of the export application, Form 1689, canceled and credit given in the supervisor's account with the brewer's export bond in the manner required by § 192.356.

(53 Stat. 367 as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.364 *Examination by customs officer.* The collector of customs with whom entry on Form 1689 has been filed shall fill in on each copy of such form the order for inspection and lading. The inspector of customs shall carefully examine the packages of the fermented liquor described in the entry. He shall examine the contents of such packages as are found broken or tampered with, or which he is led to suspect do not contain the fermented liquor originally packed therein, and make a special report thereon. The inspector of customs shall note in his report any deficiency in quantity or discrepancy between the article inspected and that described in the entry. After having complied with the order of inspection and after the fermented liquor has been duly laden on board the exporting vessel or car, the inspector of customs shall complete and sign the certificate of inspection and lading on each copy of the entry on Form 1689. If the inspector of customs discovers any evidence of fraud, he shall detain the goods and notify the collector of customs, who shall inform the supervisor of the district in which said port is located. The supervisor shall cause seizure thereof to be made, and report the facts immediately to the Commissioner.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.365 *Certificate of exportation.* After inspection, lading, and clearance for a foreign port of the vessel or vehicle on which the fermented liquor described in the entry is laden, the collector of customs shall execute his certificate of exportation on the back of each copy of the Form 1689. He shall retain one copy of the Form 1689 for his entry record, and transmit the other, fully executed, to the supervisor of the district from which the fermented liquor was shipped.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5654.

§ 192.366 *Evidence of foreign landing.* The district supervisor receiving from the collector of customs at the port of exportation the executed application and entry on Form 1689, and, upon examination of the same and finding that the entry has been properly certified as to inspection, lading and clearance for the foreign port and that no shortage has been reported in transit for export, shall note on Form 1689 the actual quantity cleared for exportation and shall retain same in his office pending the receipt by him of evidence of foreign landing, and there being no shortage in exportation, he shall enter an appropriate credit in the account kept with the export bond.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

§ 192.367 *Shortage in foreign landing.* If a shortage is reported, the district supervisor shall enter credit for the actual quantity, if any, received at the foreign port as indicated by the evidence of landing, and shall report promptly for assessment the amount of the tax due on the shortage. If shortages are disclosed in more than one export shipment of a brewer, all the shortages reported during a month may be included in a consolidated assessment to be reported at the close of the month.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5654.

§ 192.368 *Shipment without inspection.* Where a shipment which should be inspected by customs officials is laden on board the exporting vessel, railroad car, or motor truck without such inspection or supervision, the brewer shall be required to furnish to the supervisor for the district from which the fermented malt liquor was shipped a landing certificate or proof of loss on land or at sea, as provided in this part, and if necessary, comply with the requirements relative to securing an extension of time for presentation of proof, and with those concerning collateral evidence as to landing.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.369 *Landing certificate.* Each brewer exporting fermented malt liquor, free of tax, must agree in the required bond that he will procure, within a reasonable time, evidence satisfactory to the Commissioner that such fermented malt liquor has been landed at some port outside the jurisdiction of the United States, or, after shipment, that the same was lost on land or at sea. The landing certificate must give such description as will readily identify the fermented malt liquor to which it relates and show the entry number. The landing certificate shall be filed with the district supervisor

with whom the entry for exportation was filed.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.370 *Signing of landing certificate.* The landing certificate shall be signed by a revenue officer of the foreign country to which the merchandise is exported, by the master of the vessel, or by the vessel's agent at the place of landing. The certificate must be filed within six months from the date of exportation of the merchandise.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5736.

§ 192.371 *One landing certificate for several consignments.* One landing certificate may cover several consignments made by the same shipper to the same consignee, or to a general agent, on the same date by the same vessel, railroad car, or motor truck, and to the same foreign port, provided each consignment is specifically and separately described in the certificate. A certificate in a foreign language must be accompanied by a sworn translation thereof.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.372 *Landing certificate not obtained.* When the brewer is unable to procure a landing certificate in consequence of loss on land or at sea, he shall file with the supervisor with whom he filed the entry for exportation, an application for relief, setting forth the extent of the loss and, if possible, the location and manner of shipwreck, railroad wreck, or other casualty, and the time of its occurrence. Such application must be accompanied by the affidavits of two or more creditable and disinterested persons as to the loss. If the goods were insured, the brewer shall also file certificates by officers of the insurance companies, or board of underwriters, that the insurance has been paid, and that, to the best of their knowledge and belief the goods were actually destroyed on land or at sea. When obtainable, affidavits must be furnished by the master and mate of the vessel, conductor or other official of the railroad, or operator of the motor truck, detailing the manner and extent of the loss and the time and location of the disaster or other casualty. Such proof shall be furnished to the supervisor within six months from the date of exportation.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.373 *Proof of landing not furnished.* In case the brewer, from causes beyond his control, is unable to furnish the required proof of landing or loss on land or at sea within the time prescribed, he may make application to the supervisor for an extension of time for production of the evidence. Such application must state specifically the cause of failure to produce the evidence and be verified under oath. One extension of three months may be granted and, if necessary, upon a second application, an additional extension of three months may be granted by him.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5074.

§ 192.374 *Evidence of landing not produced.* In case of inability to produce the prescribed evidence of landing, application for relief may be made to the Commissioner, through the supervisor for the district from which the fermented malt liquor was shipped.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.375 *Form of application for relief.* Such application must be made under oath and must recite the facts connected with the alleged exportation, setting forth the date of shipment; the kind, quantity, and value of the fermented malt liquor shipped; the name of the consignee; the name of the vessel by, and the port to, which the shipment was made; and the date and amount of the bond covering such shipment; also it shall state in what particular the regulations respecting the proofs of landing have not been complied with; the cause of failure to produce such proofs; that such failure was not occasioned by any lack of diligence on the part of the applicant, or that of his agents; and that he is unable to produce any other or better evidence than that submitted with his application.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.376 *Evidence to support application.* Each application shall be supported by such collateral evidence as the brewer is able to submit. The evidence may embrace original or verified copies of letters from consignees advising the shipper of the arrival or sale of the fermented malt liquor, with such other statements respecting the failure to furnish the prescribed evidence of landing as may be obtained from the consignee or other persons having knowledge thereof. Letters and other documents in a foreign language must be accompanied by sworn translations and when the letters fail to identify sufficiently the goods the original sales account must be produced.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.377 *Supervisor's action on application.* The district supervisor receiving such application and evidence shall examine same and endorse thereon his approval or disapproval and if satisfied as to its validity will enter proper credit in the account kept with the bond.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.378 *Tax assessed.* If the landing certificate is not furnished by the brewer to the supervisor within the period provided for in this part (or such additional extensions of time as may be granted by the Commissioner), or in the absence of other substantiating evidence of landing, or proof of loss on land or at sea, an assessment shall be made against the brewer in a sufficient amount to cover the tax on the quantity of fermented malt liquor for which the required final evidence of exportation has not been furnished.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.379 *Brewer's report.* Each brewer shall render such reports as may be required by the Commissioner in respect to the quantity of fermented malt liquor withdrawn and exported free of tax.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.380 *Exported beer returned.* When fermented malt liquor which has been exported is returned to the United States, the collector of customs shall in every case, without regard to the time the fermented malt liquor has remained abroad, require the consignee to file with his declaration and entry an affidavit on Customs Form 3311. Such affidavit shall clearly set forth the circumstances under which the fermented malt liquor was shipped from and returned to the United States, and that such shipment and subsequent return were made in good faith and not for the purpose of evading the internal revenue tax on said liquor. Unless such affidavit or other satisfactory proof of the actual bona fide exportation is furnished, the fermented malt liquor so returned shall be detained by the collector of customs and the case reported to the Secretary of the Treasury. Where fermented malt liquor exported under internal revenue laws, in bond, is returned to the United States in the original packages and can be fully identified as of domestic manufacture, it will be admitted to entry as reimported domestic fermented malt liquor, and a duty equal to the internal revenue tax imposed on such domestic fermented malt liquor shall be collected.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.381 *Tax on returned beer.* When fermented malt liquor, identified as of domestic manufacture, which has been exported free of tax, is returned, it is liable to a customs duty equal to the tax imposed by the internal revenue laws upon such malt liquor. Such American fermented malt liquor must have customs stamps affixed to denote payment of duty thereon, but need not have internal revenue stamps affixed. Customs inspectors shall write across the face of the customs inspection stamp, in red ink, "American goods returned," followed by their initials.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

§ 192.382 *Reimported beer not identified.* All fermented liquor reimported, which cannot be identified as having been produced in the United States, will be treated as imported fermented liquor and will be subject to the customs duty and the internal revenue tax. In such instances the fermented liquor shall be marked and labeled the same as imported fermented liquor.

(53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5769.

## SUBPART Z—SUPPLIES FOR VESSELS AND AIRCRAFT

§ 192.390 *General.* Fermented malt liquor may be removed from breweries and brewery bottling houses free of tax for use as supplies on the following vessels and aircraft:

(a) Vessels of war, in ports of the United States, of any nation which may reciprocate such privilege toward the vessels of war of the United States in its ports;

(b) Vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions;

(c) Aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions; and

(d) Aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted, and where the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States.

(Sec. 309, 46 Stat. 690, as amended; 19 U. S. C. 1309; 53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5074.

§ 192.391 *Procedure applicable.* The removal, shipment, examination by customs officers, and evidence of lading on vessels and aircraft, of fermented malt liquor from a brewery or brewery bottling house for use as supplies will, so far as applicable, follow the procedure of Subpart Y of this part, concerning the exportation, free of tax, of fermented malt liquor.

(Sec. 309, 46 Stat. 690, as amended; 19 U. S. C. 1309; 53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5074.

§ 192.392 *Form 1689.* Application will be made on Form 1689, for the removal of fermented malt liquor from a brewery or from the bottling house of a brewery for use as supplies on vessels and aircraft.

(Sec. 309, 46 Stat. 690, as amended; 19 U. S. C. 1309; 53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5654.

§ 192.393 *Bond.* Before any beer is removed from the bottling house for use as supplies on vessels or aircraft, consent of surety on Bond Form 263 must be obtained in accordance with § 192.130. If no Bond Form 263 is on file with the supervisor, the brewer, prior to bottling beer for use on vessels or aircraft, will be required to obtain and file such bond properly modified.

(Sec. 309, 46 Stat. 690, as amended; 19 U. S. C. 1309; 53 Stat. 367, as amended; 26 U. S. C. 3153)

DERIVATION: T. D. 5074.

§ 192.394 *Evidence of use.* When fermented liquor has been laden on board a vessel or aircraft for use as ship's supplies or supplies for aircraft, there must be submitted to the district supervisor within six months (or such additional extensions of time as may be granted by the district supervisor or the Commissioner), an affidavit of the master or other officer of the vessel or aircraft on which the articles were laden, having knowledge of the facts, showing that the fermented malt liquor has been used on board the vessel or aircraft, and that no portion thereof has been unladen in the United States or any of its possessions: *Provided,* That in the case of any shipment the tax on which does not exceed $100, such affidavit will not be required. In the case of vessels of war, such affidavit will not be required.

DERIVATION: T. D. 5769.

### SUBPART AA—BEER PURCHASED FROM ANOTHER BREWER

§ 192.400 *Notice to supervisor.* Upon written notice to the district supervisor of his intention so to do, a brewer may purchase from another brewer fermented malt liquor finished and ready for sale in order to supply the customers of such purchaser. The purchasing brewer may furnish his own vessels, branded with his name and the place where his brewery is situated, to be filled with the fermented liquor so purchased, and to be so removed; the proper stamps to be affixed and canceled by the manufacturing brewer before removal.

(53 Stat. 368, 26 U. S. C. 3155)

§ 192.401 *Manufacturer's entries in Form 103.* The manufacturer of the liquor will show in red ink in a footnote on his record, Form 103, for the month in which the liquor is delivered, the quantity involved and the fact that it was sold at wholesale to the purchasing brewer.

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

§ 192.402 *Purchasing brewer's entries in Form 103.* The purchasing brewer will show in a footnote on his return, Form 103, for the month in which the liquor is received the quantity received, the name and address of the vendor brewer, and the fact that the containers were regularly stamped when received. When the liquor thus acquired or any portion thereof is disposed of, the purchasing brewer will enter the same in a footnote on the return in red ink in the following form:

Sold in addition to the above _____ barrels of liquor purchased regularly stamped from _____, _____, _____.
(name of brewer) (City) (State)

The transactions will not be taken into account in the body of the return, Form 103, rendered by the purchasing brewer. The details of each such transaction will be entered in the daily sales record of each of the brewers.

(53 Stat. 368; 26 U. S. C. 3155)

§ 192.403 *Form of notice.* Notice on the part of the purchasing brewer of the purchase of fermented liquor from another brewer will be furnished the supervisor of the district in which the brewery is located. If the brewer from whom the fermented liquor is purchased is located in another supervisory district, the purchasing brewer will prepare an additional copy of the notice and send it to the supervisor of the district in which the vendor brewer is located. The form of such notice should be as follows:

_____, _____, _____, 19____
(City) (State)

*To the District Supervisor, _____ District, Alcohol Tax Unit, Bureau of Internal Revenue,*

_____, _____

SIR: You are hereby notified that I have purchased _____ barrels of _____, from _____, brewer, and that I intend to furnish my own vessels, branded with my name, for the reception of such liquor; said vessels to be delivered from the premises of said brewer at _____ o'clock _____ m., on the _____ day of _____, 19____.

_____
(Brewer)

(53 Stat. 368; 26 U. S. C. 3155)

DERIVATION: T. D. 5769.

### SUBPART BB—CEREAL BEVERAGE

§ 192.410 *Production of cereal beverage.* Duly qualified brewers who produce fermented liquor containing, when ready for consumption, less than one-half of 1 percent of alcohol by volume may remove the same without tax-payment, even though it may at some stage of its manufacture contain alcohol in excess of such amount. Such beverages may be produced on the same premises where other fermented liquors are produced.

(53 Stat. 371, as amended; 26 U. S. C. 3158)

§ 192.411 *Method of manufacture.* The method of manufacturing cereal beverages must be such that its alcoholic content will not increase while in the original package or container after being removed from the place of manufacture. The burden is on the brewer not only to know that the beverage he sends out unstamped is within the limit, but also to know that the condition of the liquor is such that no increase in the alcoholic content can take place after the beverage leaves his premises, sufficient to remove it from the cereal beverage class. In all cases where cereal beverages containing alcohol in excess of the limit are found on the market the brewer who produced it will be held liable to the tax thereon as fermented liquor, the packages with their contents will be subject to seizure and forfeiture, and the brewer will be liable to prosecution.

(53 Stat. 371, as amended; 26 U. S. C. 3158, 3159)

§ 192.412 *Transfers to bottling house.* The law permits the transfer by pipeline of fermented liquor containing less than one-half of 1 percent of alcohol by volume from the brewery where manufactured to the brewery bottling house. This fermented liquor is non-taxable as such under internal revenue law.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.413 *Supervision of inspector.* Cereal beverage removed to the brewery bottling house must pass through the pipeline and meter used for the transfer of beer. Such transfers of cereal beverage must be conducted under the immediate supervision of an inspector assigned for that purpose. The inspector shall report on Form 138, prepared in triplicate, the quantity of cereal beverage in

whole barrels passed through the meter, noting thereon the continuous counter readings of the meter before and after removal thereof. One copy of the form will be placed in the "Government cabinet," one copy will be given to the brewer, and one copy will be forwarded immediately to the district supervisor.

(53 Stat. 318, 370, as amended; 26 U. S. C. 2829, 3157)

DERIVATION: T. D. 5769.

§ 192.414 *Inspector's examination of beverage.* Prior to the removal of cereal beverage from the brewery, the inspector will examine it, determine its alcoholic content by ebulliometer test, and record the reading of the continuous counter of the meter. The inspector will remain in the brewery during the period of transfer to see that no liquids other than the contents of the tanks examined and tested are removed to the brewery bottling house.

DERIVATION: T. D. 5769.

§ 192.415 *Special taxes.* Persons selling or offering for sale, as cereal beverages, fermented malt liquors containing one-half of 1 percent or more of alcohol by volume, will be held liable to special tax as dealers in fermented malt liquors and the packages with their contents will be subject to seizure and forfeiture.

(53 Stat. 388, as amended; 26 U. S. C. 3250)

§ 192.416 *Samples for analysis.* Officers of the Internal Revenue Service having reason to suspect that any beverage claimed to be nontaxable as cereal beverage is, in fact, taxable as fermented malt liquor, shall take samples for analysis, sealing and labeling them in the usual manner. At the time the sample is drawn from the bulk container for the purpose of forwarding to the laboratory, a 5-grain tablet of bichloride of mercury (poison) should be immediately added to the bottle containing the sample, in order to arrest fermentation and keep the alcoholic content constant. When the tablet is dissolved, the same should be mixed by shaking. The label must be conspicuously marked "Poison," and any officer who poisons such sample and omits to so state on the label is liable to be recommended for dismissal. The small sealed pasteurized bottle which usually goes to the consumer need not be poisoned when taken as a sample.

§ 192.417 *Packages.* Cereal beverage when removed from the brewery premises in bulk must be contained in packages unlike those ordinarily used for packaging other fermented liquor: *Provided,* That regular beer cooperage may be used, if the head of the barrel is durably painted in a solid color, with conspicuous lettering in a contrasting color, reading "Non-taxable as fermented liquor. Less than half of 1 percent of alcohol by volume." The word "Non-taxable" shall be not less than 1½ inches high and of proportionate width, the remaining words to be not less than one-half inch high and of proportionate width. The name or trade name of the manufacturer and the place of manufacture (city and state) must also be legibly marked on the package. The hoops, or the space between hoops at each end must be durably painted in white.

DERIVATION: T. D. 5769.

§ 192.418 *Cases.* The name or trade name of the manufacturer, the place of manufacture (city and state), and the nature of the product must be shown on each case or other similar shipping container for bottled or canned cereal beverage.

DERIVATION: T. D. 5769.

§ 192.419 *Labels.* Bottles or cans containing cereal beverages not taxable as fermented liquors are required to have a label setting forth the following information:

(a) Name of the brewer.

(b) The location of the brewery by city and state, or street number, city, and state, if the brewer operates more than one brewery in the same city.

(c) Distinctive name of the beverage, if any.

(d) "Non-taxable as Fermented Liquor Under Federal Law." The label may contain other statements desired by the brewer if they are not inconsistent with the requirements of this section.

DERIVATION: T. D. 5654.

§ 192.420 *Unlabeled bottles.* The Bureau of Internal Revenue will not undertake to make the liability for the sale of fermented liquors rest upon an analysis of the contents of unlabeled bottles. The payment of the special tax as dealer in malt liquor will be required of all persons selling or offering for sale any unlabeled bottle or other package, the contents of which has the flavor or appearance of beer, and which is manifestly beer or an imitation beer, regardless of the alcoholic content thereof.

§ 192.421 *Products kept separate.* Brewers who also manufacture cereal beverages not taxable as fermented liquor shall keep the finished products, taxable and non-taxable, separate and distinct one from the other.

§ 192.422 *Materials reported in Form 103.* Materials used at breweries in the production of cereal beverages shall be included in the quantities of materials reported in Form 103 as used in the production of fermented liquor and shall not be shown separately. Breweries producing cereal beverages will keep records and render reports on Form 66 in accordance with instructions printed thereon.

### SUBPART CC—LOCKS AND SEALS

§ 192.430 *Security of conduits and tunnels.* Slaight seal locks are prescribed for use in securing the doors of tunnels, and either slaight locks or cap seals may be used in securing the doors of conduits, through which pipes carry beer from the brewery to the brewery bottling house.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

§ 192.431 *Supervision of locks, etc.* Inspectors having charge of locks, keys, and seals procured for use at brewery premises are strictly prohibited from entrusting them to any person other than an officer entitled to receive them, and they shall not permit locks to remain open, whether hanging by the shackle or otherwise.

(53 Stat. 370, as amended; 26 U. S. C. 3157)

DERIVATION: T. D. 5769.

### SUBPART DD—INSPECTION

§ 192.435 *General.* Government officers will make inspections at such frequency and with such thoroughness as to determine that all operations are being conducted in accordance with the law and this part.

DERIVATION: T. D. 5769.

### SUBPART EE—RECORDS, REPORTS, AND RETURNS

§ 192.440 *Form 103.* Each brewer shall keep Form 103 or its equivalent in book form, reporting thereon the quantity of each kind of material received on the brewery premises, the quantity used in the production of fermented liquor, the quantity of fermented liquor produced therefrom, the quantity of fermented liquor removed from the brewery premises, and other information required by this part, and by the lines and instructions on the form. The materials brewed each day and the fermented liquor produced therefrom, shall be reported on such record as of the business day during which the brews were started. There shall also be reported as a debit in the "Fermented Liquor Summary" on Form 103, the quantity of water, if any, used in adjusting the balling or alcoholic content of the fermented liquor after production has been determined. The entries shall be made before the close of the business day next succeeding the day on which the transactions occur. The aggregates of quantities bottled, as shown in the daily returns on Form 139 will be entered by the brewer in the "Fermented Liquor Summary" of Form 103 at the close of the month. Monthly returns of the operations of such plants on Form 103 shall be made not later than the 10th day of each month for the preceding month. Such returns shall be prepared in triplicate and each copy signed by the brewer or his duly authorized agent. Two copies shall be forwarded to the supervisor who shall forward one to the Commissioner. The remaining copy will be retained by the brewer and filed as a permanent record so as to be available for inspection at any time within the succeeding four years.

(53 Stat. 368, 373; 26 U. S. C. 3155, 3171)

DERIVATION: T. D. 5769.

§ 192.441 *Daily return, Form 139.* All beer transferred from the brewery to the brewery bottling house must be shown in the daily return on Form 139, prepared in triplicate: *Provided,* That this requirement shall not be considered applicable to beer transferred in barrels or kegs for consumption in the brewery bottling house. The aggregate quantity of beer bottled and the aggregate quantity removed for a taxable purpose during the day must also be shown. The daily return must be prepared before the close of the business day next succeeding

the day on which the transactions occur. One copy of Form 139 to which canceled stamps are attached will be disposed of as provided in §§ 192.280–192.282, one copy will be attached to Form 103 by the brewer at the time of transmittal of the latter form to the district supervisor and the remaining copy will be retained by the brewer as a part of his Government record to be kept available for inspection for a period of four years. The quantity of beer received from the brewery will be reported on the basis of meter readings as shown by the continuous counter. The set-back counter may be used by the brewer for checking continuous counter readings, and upon completion of the day's run it must be set at zero. Entries in the return as to quantities of beer bottled and entries as to quantities removed for a taxable purpose must be supported by accurate and complete records.

DERIVATION: T. D. 5769.

§ 192.442 *Inventory of beer in bottling house.* An actual inventory of bulk and bottled beer in the brewery bottling house shall be established as frequently as the brewer's operations may permit, and in any event shall be taken at least once during each calendar month. If the quantities of bulk and bottled beer shown by actual inventory as being on hand are less than the quantities indicated by brewery records as being on hand, the difference must be reported in the "Statement of Transactions in Fermented Liquor" on Form 103 as a shortage disclosed by actual inventory. If the inventory discloses that the quantities actually on hand are greater than the quantities indicated by brewery records as being on hand, the difference must be reported in the "Statement of Transactions in Fermented Liquor" on Form 103 as an overage disclosed by actual inventory. The quantities shown as on hand by actual inventory will also be reported on Form 103. Work sheets used in establishing an actual inventory will be appropriately identified and retained on the brewery premises available for examination by Government officers. Undelivered tax-paid beer temporarily held in the brewery bottling house and cereal beverage will be inventoried at the same time and reported on separate inventories, but the totals thereof will not be included in the above inventory.

DERIVATION: T. D. 5769.

§ 192.443 *Brewery bottling house losses.* Where a brewer desires to keep shortages disclosed by actual inventory at a minimum by taking credit currently for actual losses sustained in the brewery bottling house due to breakage, casualty or other unusual cause, a record of daily losses showing the cause or causes thereof must be maintained by the brewer available for ready examination by Government officers: *Provided*, That where a loss in a substantial amount is sustained due to a casualty, an immediate report thereof must be made to the district supervisor, or to an inspector if one is at the brewery premises at the time the casualty is discovered. The district supervisor will cause such investigation to be made as the facts and circumstances warrant. Where the extent of a loss is established, the quantity will be reported in the "Statement of Transactions in Fermented Liquor" on Form 103.

DERIVATION: T. D. 5769.

§ 192.444 *Purchase record.* Purchase invoices for brewing materials received by the brewer shall be maintained for ready examinations by Government officers at any time within the succeeding four years.

DERIVATION: T. D. 5769.

§ 192.445 *Production record.* Each brewer shall keep a daily record of each brew showing the business day on which the brew was started, the quantities of materials used therein by kinds, the quantity of wort produced therefrom as determined by actual measurement in the settling tank, and the balling of such wort. The quantity of water, if any, added after production has been determined, shall also be entered in this record. The record shall be permanently filed at the brewery and kept available for inspection by Government officers for a period of four years.

DERIVATION: T. D. 5769.

§ 192.446 *Removal record.* Each brewer must keep at the brewery premises a daily summary record of the removals of bottled beer and cereal beverage by kind, number and size of container (if cases, the number and size of bottles or cans). This record must show the quantities of such liquors removed from the brewery premises, the quantities sold or exported, and the quantities lost by breakage or otherwise after removal while still in the brewer's possession. The record must also show the quantities of fermented liquor and cereal beverage on hand in off-premises storage: *Provided*, That this requirement shall not be applicable where the brewer maintains at the off-premises place of storage, available for examination, a complete record of receipts and sales at such premises. No separate record need be set up to comply with this section if current commercial records kept by the brewer showing the required data are summarized to reflect the totals of each day's transactions in a manner satisfactory to the district supervisor. Such records must be held available for inspection by Government officers for a period of four years.

DERIVATION: T. D. 5769.

§ 192.447 *Timely entry in records.* Unless otherwise specifically prescribed in this part, all entries in records, reports, and returns shall be made not later than the close of the business day next succeeding the day on which the transactions occur.

DERIVATION: T. D. 5769.

§ 192.448 *Brewer's application to destroy or return beer to brewery.* When a brewer has beer in the brewery bottling house which he desires to destroy, or if he has beer in the brewery bottling house which requires recarbonation or reconditioning and must therefore be returned to the brewery, he shall make written application in triplicate, to the district supervisor, stating the approximate quantity of such beer and whether he desires to destroy it or return it to the brewery: *Provided*, That such application may be submitted directly to an inspector at the brewery premises, who may thereupon supervise the destruction or return of the beer. Upon destruction or return to the brewery, the quantity of beer so disposed of must be reported in the "Statement of Transactions in Fermented Liquor" on Form 103.

DERIVATION: T. D. 5769.

§ 192.449 *Supervisor's action on brewer's application to destroy or return beer to brewery.* Upon receipt of an application the district supervisor will detail an officer to supervise the destruction of the beer in the brewery bottling house or its return to the brewery.

DERIVATION: T. D. 5769.

§ 192.450 *Inspector's action on brewer's application to destroy or return beer to brewery.* Upon supervising the destruction or return of beer pursuant to the brewer's application and entering on all copies of the application, or an appendage thereto, the date of destruction or return and the actual quantity of beer involved, the inspector will return one copy of the completed application to the brewer for inclusion in his permanent file of Forms 103, forward one copy to the district supervisor, and place the remaining copy in the Government cabinet.

DERIVATION: T. D. 5769.

§ 192.451 *Verification.* Forms 27–C, 66, 103, and 139 shall contain or be verified by a written declaration that they are made under the penalties of perjury.

(63 Stat. 667; 26 U. S. C. 3809)

DERIVATION: T. D. 5769.

§ 192.452 *Daily sales record.* Each brewer must keep at the brewery, and available for inspection at all times, a daily sales record, showing in detail the number and kind of packages, such as hogsheads, barrels, half-barrels, cases, etc., of fermented malt liquor and cereal beverages sold or removed, the names and addresses of the purchasers, and the amounts sold to each such purchaser. The sales records will be held available for inspection for a period of four years.

DERIVATION: T. D. 5654.

§ 192.453 *Monthly reports.* The district supervisor shall, after audit, and on or before the last day of the month succeeding the rendition thereof, forward to the Commissioner the returns, on Form 103, rendered by the respective brewers.

DERIVATION: T. D. 5769.

### SUBPART FF—SAMPLES OF FERMENTED MALT LIQUOR

§ 192.460 *General.* Samples of fermented malt liquor may be removed, without payment of tax, as provided in §§ 192.461 to 192.465, by brewers, either

from the brewery or from the bottling house to a laboratory for analytical purposes (including organoleptic examination) to determine the character or quality of the product.

DERIVATION: T. D. 5847.

§ 192.461 *Application.* Whenever a brewer desires to remove samples of fermented malt liquor without payment of tax, for analytical purposes, he shall file application, in triplicate, with the district supervisor. The application shall be serially numbered, beginning with number "1" and running consecutively thereafter. The application shall set forth specifically the size, kind and number of samples to be removed, the period during which the samples shall be removed, and the name and address of the laboratory to which the samples will be removed for analysis. Where it is desired to remove samples regularly the application may be made for that purpose. The number and size of the samples must be restricted to the minimum necessary for the purpose. A statement of the necessity for the analysis of samples and for the number and size of such samples shall be incorporated in the application. The brewer shall also incorporate in the application a statement that the samples covered thereby will not be used for purposes other than laboratory analysis.

DERIVATION: T. D. 5847.

§ 192.462 *Approval of application.* The district supervisor must satisfy himself as to the need for the number and size of samples desired and the legitimacy of the purpose for which they are to be used before approving the application. The district supervisor, upon approval or disapproval of the application, shall return one copy to the brewer, forward one copy to the Commissioner, and retain the original in his office. Any approved application may be terminated if the Commissioner or the district supervisor determines that such action is warranted: *Provided*, That, except in cases involving willfulness or where the public interest requires otherwise, the brewer shall be notified in writing of the facts or conduct warranting such action and be accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

DERIVATION: T. D. 5847.

§ 192.463 *Labeling.* Each bottle or other immediate container of fermented malt liquor to be removed, without payment of tax, for analytical purposes shall be labeled to show the nature and quantity of the contents, the name and address of the laboratory to which it will be removed, and the name and address of the brewer. The label shall bear the statement, "Sample for laboratory analysis only—not for sale or beverage use."

DERIVATION: T. D. 5847.

§ 192.464 *Records.* A separate record shall be maintained showing by date, the quantity of fermented malt liquor removed pursuant to an approved application and the serial number of such application. Proper credit entry for the total quantity so removed during the month must be made in the summary on Form 103.

DERIVATION: T. D. 5847.

§ 192.465 *Residues of samples.* Residues or remnants of samples remaining after laboratory analysis which are not to be retained as laboratory specimens or for comparative purposes must be destroyed or returned to the brewery premises. The samples or the residues thereof may not, in any event, be sold, or disposed of otherwise.

DERIVATION: T. D. 5847.

§ 192.466 *Analysis on brewery premises.* Applications need not be filed where samples are to be taken for analysis in the brewer's laboratory located on the brewery premises.

DERIVATION: T. D. 5847.

§ 192.467 *Taxpayment.* Any samples of fermented malt liquor removed or used otherwise than as authorized in §§ 192.460 to 192.466 shall be subject to taxpayment in accordance with this part.

DERIVATION: T. D. 5847.

These regulations shall be effective as of August 1, 1951.

[SEAL] JOHN B. DUNLAP,
*Commissioner of Internal Revenue.*

Approved: September 11, 1951.

THOMAS J. LYNCH,
*Acting Secretary of the Treasury.*

[F. R. Doc. 51-11158; Filed, Sept. 14, 1951; 8:51 a. m.]

# TITLE 32A—NATIONAL DEFENSE, APPENDIX

## Chapter VI—National Production Authority, Department of Commerce

[NPA Reg. 2, as amended Sept. 13, 1951]

### REG. 2—BASIC RULES OF THE PRIORITIES SYSTEM

This amended NPA Reg. 2 is found necessary and appropriate to promote the national defense and is issued pursuant to the authority granted by section 101 of the Defense Production Act of 1950 as amended. Consultation with industry representatives, including trade association representatives, in advance of the issuance of this regulation as amended has been rendered impracticable by the fact that this regulation applies to all trades and industries.

This amendment affects NPA Reg. 2 (as last amended July 17, 1951) as follows: It amends the title and all paragraphs of section 3; amends paragraphs (a) and (b) of section 4; amends paragraph (d) of section 9; amends paragraph (a) of section 10; amends all paragraphs of section 13; amends paragraph (a) of section 14, adds a new paragraph designated (b) to section 14, redesignates paragraph (b) of section 14 as paragraph (c); amends paragraph (a) of section 15; adds a new paragraph (d) to section 15; and amends paragraph (a) of section 17.

As so amended, NPA Reg. 2 reads as follows:

GENERAL

Sec.



AUTHORITY: Sections 1 to 28 issued under sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U. S. C. App. Sup. 2071; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.; sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61.

SECTION 1. *What this regulation does.* This regulation states the basic rules of the priorities system to be administered by the National Production Authority. It states what kind of orders are rated orders, how to place them, and the preference status of such orders. These rules apply to all business transactions within the jurisdiction of NPA unless more specific regulations, orders, or directives of NPA state otherwise.

SEC. 2. *Definitions.* (a) "Person" means any individual, corporation, partnership, association, or any other organized group of persons, and includes any agency of the United States or any other government.

(b) "Materials" means any raw, in-process, or manufactured commodity, equipment, component, accessory, part, assembly, or product of any kind.

(c) "NPA" means the National Production Authority.

(d) "Rated order" means any purchase order, contract, or other form of procurement for materials or services bearing an authorized rating and the certification required by this regulation or any other applicable regulation or order of NPA.

(e) "Assignment" of a rating. A rating is assigned when NPA, or a Government agency that it has authorized, grants a person the right to use the rating.

(f) "Application" of a rating. A rating is applied when the person to whom it is assigned uses the rating.

(g) "Extension" of a rating. A rating is extended when it is used by the person to whom it was applied or when it is further used by another person to whom it was extended.

SEC. 3. *Ratings authorized.* (a) The following ratings are authorized:

(1) A DO rating. This rating will be indicated by the prefix DO and an identification of the program, which must be furnished a supplier by the person who is using the rating.

(2) A DX rating. This rating will be indicated by the prefix DX and an identification of the program. The DX rating will be authorized for use only as an emergency rating, to obtain products and materials in cases of extreme urgency. Except where expressly provided to the contrary in any NPA regulation or order, any provision of any NPA regulation or order applicable to any DO rating shall also apply to any DX rating.

(b) Rated orders shall have the following preferential status:

(1) All DX rated orders will have equal preferential status. Any DX rated order shall take priority over any unrated or DO rated order.

(2) All DO rated orders will have equal preferential status. Any DO rated order shall take priority over any unrated order.

(c) A rating shall have no effect on deliveries on orders calling for delivery of controlled materials (as defined in CMP Regulation No. 1) after September 30, 1951.

(d) A rated order with a program identification consisting of a letter and one digit or consisting of two or more letters constitutes a "rating with an allotment number or symbol" as referred to in CMP regulations.

SEC. 4. *When ratings may be assigned or applied.* (a) A claimant agency, or other person designated by NPA, may be authorized by NPA to assign or apply a rating. However, no authorization to assign or apply ratings, whether by delegation, regulation, or otherwise, shall include authority to assign or apply a DX rating, unless expressly so stated therein.

(b) When a regulation, order, or certificate assigns a rating to any person either by naming him or by describing the class of persons to which he belongs, that person may apply the rating to get delivery of materials or the performance of certain services.

(c) No person may place rated orders for more material than he is authorized to rate even though he intends to cancel some of the orders or reduce the quantity of material ordered to the authorized amount before it is all delivered.

SEC. 5. *When ratings may be extended for material.* (a) When a person has received a rated order for the delivery of material, he may extend the rating to get the material which he will deliver on that order, or which will be physically incorporated in the material which he will deliver, including containers and packaging materials required to make the delivery, and including also chemicals directly used in the production of the material. If the material is to be processed, this includes the portion of it which would normally be consumed or converted into scrap or byproducts in the course of processing. However, he may not extend such a rating to get material for plant improvement, expansion, or construction, or to get machine tools or other items which he will carry as capital equipment, or to get maintenance, repair, or operating supplies.

(b) If a person has made delivery of material or has incorporated it into the material which he has delivered on a rated order, he may extend the rating to replace it in his inventory subject to the inventory provisions of any NPA regulation or order. Any material ordered with a rating as replacement in inventory must be substantially the same as the material which the person delivered or incorporated in the material which he delivered, except for minor variations in size, shape, or design.

SEC. 6. *Additional restrictions upon the use of ratings for certain materials.* The ratings established by this regulation shall have no effect upon deliveries of any of the items listed or referred to in List A at the end of this regulation. No person shall use ratings to obtain any of such items, and no person selling any such items shall require a rating as a condition of sale. Any rating purporting to be used to obtain any such items on a preferred basis shall be void.

SEC. 7. *Use of ratings for services.* (a) When a person is entitled to use a rating to get processed material, he may furnish the unprocessed material to a processor and use the same rating to get the material processed.

(b) If NPA specifically authorizes a person to use a rating to get services, he may use it for that purpose.

(c) Except as provided in paragraphs (a) and (b) of this section, no person may use a rating to get services.

(d) A person to whom a rating for services, as distinct from the production or delivery of material, has been applied or extended may not extend the rating for any purpose.

SEC. 8. *How to apply or extend a rating.* (a) When a person applies or extends a rating, he must put the prefix DO and an identification of the program supplied to him; for example, DO–39, DO–K2, or DO–SU, on his purchase order, or on a separate piece of paper attached to the order or clearly identifying it, together with the words "Certified under NPA Reg. 2," signed as prescribed in this section. This certificate constitutes a representation to the supplier and to NPA that the purchaser is authorized under the provisions of this regulation or CMP regulations to use the rating for the delivery of the materials covered by the purchase order. A certification under any CMP regulation shall be deemed to be a certification under this regulation.

(b) Certifications on purchase or delivery orders must be signed by the person placing the order or by a responsible individual who is duly authorized to sign for that purpose. The signature must be either by hand or in the form of a rubber stamp or other facsimile reproduction of a handwritten signature. If a facsimile signature is used, the individual who uses it must be duly authorized in writing to use it for this purpose by the person whose signature it is, and a written record of the authorization must be kept.

(c) When a rated order is placed by telegram, the rating identification and certificate must be set out in full in the telegram. It will be sufficient if the file copy of the telegram is signed in the manner required for certification by this regulation.

(d) On rated orders requiring shipment within 7 days, the substance of the certification may be stated verbally or by telephone. However, the following rules must be complied with:

(1) The person making the statement for the buyer must be a person duly authorized to make the certification.

(2) Both the buyer and the seller must promptly make a written record of the fact that the certification was given orally and the record must be signed by the buyer in the same way as a certification.

(e) The person who places a rated order, the individual whose signature is used, and the individual who approves the use of the signature, will each be considered to be making a representation to NPA that the statements contained in the certification are true to the best of his knowledge and belief. The person receiving the certification and any other information required to be included with it, shall be entitled to rely on it as a representation of the buyer unless he knows or has reason to believe that it is false.

(f) No person shall knowingly apply or extend or purport to apply or extend a rating to any order unless he is entitled to do so. No person shall apply or extend a rating for material or services after he has received the material or after the services have been performed, and any person who receives such a rating shall not extend it.

SEC. 9. *Special provisions applicable to extensions; grouping of orders.* (a) No person may extend any rating to replace inventory after the expiration of 3 months from the date of receipt of the order bearing the rating, or 1 month from the date he took from inventory the material being replaced, whichever date is later.

(b) If the purchase requirements for filling a number of rated orders for different items bearing different rating identifications are combined in one purchase order, each applicable rating identification must be placed alongside the related item.

(c) If the purchase requirements for filling a number of rated orders for the same material but bearing different rating identifications are combined in one purchase order, the purchase order must show the amount of such material to which a particular rating identification is extended.

(d) In the case of a manufacturer of common components or shelf items or any other person who has a number of DO rated orders or DO rated and DX rated orders, for which he cannot place orders for minimum commercially pro-

curable quantities of materials to fill the rated orders individually, he may place one DO rated order for all the materials using the identification symbol DO–Z8 (formerly DO–99). Orders bearing the rating DO–99 and outstanding on July 17, 1951, shall have the same preferential status as though they were rated DO–Z8. However, the amounts so ordered may not exceed the total amount of the material required for the rated orders so combined. An order placed pursuant to this paragraph may bear a DX rating only if all materials ordered will be used to fill DX rated orders, in which case the identification symbol DX–Z8 shall be used.

SEC. 10. *Rules for acceptance and rejection of rated orders.* Every order bearing a rating must be accepted and filled regardless of existing contracts and orders except as provided in this section. The "existing contracts and orders" referred to include not only ordinary purchase contracts but other arrangements achieving substantially the same results, though in form they may concern the use of production facilities rather than the material produced.

(a) A person must not accept a DO rated order for delivery on a date which would interfere with delivery of any rated order which he has already accepted, nor accept a DX rated order for delivery on a date which would interfere with delivery of any DX rated order already accepted. However, except as provided in paragraph (c) of this section, a DX rated order must be accepted without regard to the effect of such acceptance upon the filling of unrated or DO rated orders.

(b) If a person, when receiving a rated order bearing a specific delivery date, does not expect to be able to fill it by the time requested, he must not accept it for delivery at that time. He must either (1) reject the order, stating when he could fill it, or (2) accept it for delivery on the earliest date he expects to be able to deliver, informing the customer of that date. He may adopt either of these two courses, depending on his understanding of which his customer would prefer. He may not reject a rated order just because he expects to receive other rated orders in the future.

(c) A supplier does not have to accept a rated order in any of the following cases, but there must be no discrimination in such cases against rated orders or between rated orders of different customers:

(1) If the person seeking to place the order is unwilling or unable to meet regularly established prices and terms of sale or payment. When a person who has a rated order asks a supplier to quote his regularly established prices and terms of sale or payment, the supplier must do so, except that if this would require detailed engineering or accounting work, he may give his best estimate without such work and say that it is not binding. However, the supplier need not quote if he is not required to accept the rated order and advises the person seeking the quotation of the reason for his refusal.

(2) If the order is for the manufacture of a product or the performance of a service of a kind which the person to whom the order is offered has not usually made or performed, and in addition, if either (i) he cannot fill the order without substantially altering or adding to his facilities, or (ii) the order can readily be performed by someone else who has usually accepted and performed such orders.

(3) If an order for material is offered to a person who produces or acquires it for his own use only, and he has not filled any orders for that material within the past 2 years. If he has filled any orders within that period, but the rated order would take more than the excess over his own needs, he may reject the order for any amount over the excess.

(4) If filling the order would stop or interrupt the supplier's operations during the next 60 days in a way which would cause a substantial loss of total production or a substantial delay in operations.

(5) If the acceptance or performance of the order would violate any other regulation or order of NPA in effect at the time such order is received.

(d) A producer need not accept a rated order from another person who produces the same product. A processor need not accept a rated order from another person who performs the same processing service.

(e) Any person who refuses to accept a rated order shall, upon written request of the person placing the order, promptly give his reasons in writing for his refusal.

SEC. 11. *Report to NPA of improperly rejected orders.* When a rated order is rejected in violation of this regulation, a report of the relevant facts may be filed with the National Production Authority, Washington 25, D. C., Ref: NPA Reg. 2. NPA will take such action as it considers appropriate after requiring an explanation from the person rejecting the order.

SEC. 12. *Cancellation of ratings.* If a rating which has been used by a person is revoked, he must immediately, in the case of each order to which he has applied such rating, either cancel the order or inform his supplier that it is no longer to be treated as a rated order. If any person receives notice from his customer or otherwise that the customer's order is no longer a rated order or that the customer's order is cancelled, he must immediately withdraw any extensions of that rating which he has made to any purchase order placed by him.

SEC. 13. *Sequence of filling rated orders.* (a) Every person who has rated orders on hand must schedule his operations, if possible, so as to fill each rated order by the required delivery or performance date. If this is not possible, he must give precedence as follows:

(1) He must give precedence to any DX rated order over any unrated or DO rated order, and he must give precedence to any rated order over any unrated order.

(2) As between conflicting rated orders of otherwise equal preferential status, he must give precedence to the order which was received first with the rating.

(3) As between conflicting rated orders of otherwise equal preferential status received on the same date, he must give precedence to the order which has the earliest required delivery or performance date.

(4) If he has accepted a rated order, he may not schedule delivery on an order of the same or lower preferential status which he later receives, if such scheduling will interfere with scheduled delivery on the rated order previously accepted. However, if both deliveries can be made on schedule, he need not make delivery on the first customer's order ahead of the second.

(b) In the usual case, the date on which specifications on a rated order have been furnished to the manufacturer in sufficient detail to enable him to put the product into production is to be considered the date on which the rated order is received.

(c) If a rated order or a rating applicable to an order is cancelled when the supplier has material in production to fill it, he need not immediately stop processing in order to put other rated orders into production. He may continue to process the material which he had put into production for the cancelled order to a stage of completion which will avoid a substantial loss of total production, but he may not incorporate any material which he needs to fill any rated orders on hand. He may not, however, delay putting other rated orders into production for more than 15 days.

SEC. 14. *Changes in customers' orders.* (a) Except as provided in paragraph (b) of this section, the general rule is that any change in a customer's rated order constitutes a cancellation of the order and must be considered as a new order received on the date of the change, if the change will require the manufacturer to interfere with his production. For example:

(1) A change in shipping destination does not constitute the placing of a new order.

(2) An increase in the total amount ordered is a new order to the extent of the increase unless it can be filled with only a negligible interference with the filling of later rated orders.

(3) A change in the date of the delivery, whether advanced or deferred, when made by the customer, is a new rated order if it interferes with production or delays delivery on another rated order.

(4) A reduction in the total amount ordered will presumably not require a change in the manufacturer's schedule and will not constitute a new rated order. If the quantity is reduced below a minimum production quantity, the manufacturer may insist on the delivery of not less than a minimum production quantity. If the customer is not willing to order that amount, the manufacturer may reject the order. The manufacturer may not discriminate between customers in requiring delivery of minimum production amounts.

(5) When the customer directs the manufacturer to hold or suspend production without specifying a new delivery date, the rated order must be considered cancelled. If requested to do so within 10 days after receiving such an instruction, the manufacturer must reinstate the order as nearly as possible to its former place in his proposed schedule of delivery as long as the reinstatement does not cause loss of production or delay in the scheduled deliveries of other rated orders. Any request for reinstatement made after 10 days shall be treated as the placing of a new rated order.

(6) Where minor variations in size, design, capacity, etc., are requested by the customer and can be arranged by the manufacturer without interfering with his production, such changes do not constitute a new rated order.

(b) The application of a DX rating to an order bearing a DO rating shall not be considered a cancellation of such order: *Provided, however,* That an order to which a DX rating is applied shall not thereby take precedence over any other DX order previously received.

(c) Where a change in an order constitutes a new rated order, the conditions existing at the time the change is received govern the acceptance of the rated order and its sequence in delivery under the rules of this regulation.

SEC. 15. *Delivery or performance dates.* (a) Every rated order must specify delivery or performance on a particular date or dates or during a particular month, which, in no case, may be earlier than required by the person placing the order. Any order which fails to comply with this requirement shall not be treated as a rated order. Except in the case of a DX rated order, the words "immediately" or "as soon as possible" or other words to that effect do not meet the requirements of this paragraph.

(b) The required delivery or performance date, for purposes of determining the sequence of deliveries or performance pursuant to section 13 of this regulation, shall be the date on which delivery or performance is actually required. The person with whom the rated order is placed may assume that the required delivery or performance date is the date specified in the order or contract unless he knows either (1) that the date so specified was earlier than required at the time the order was placed, or (2) that delivery or performance by the date originally specified is no longer required by reason of any change of circumstances. A delay in the scheduled receipt of any other material which the person placing the order requires prior to or concurrently with the material ordered, shall be deemed a change of circumstances.

(c) If, after accepting a rated order which specifies the time of delivery, the person with whom it is placed finds that he cannot fill it approximately on time, he must promptly notify the customer, telling him when he expects to be able to fill the order.

(d) If a person finds that he cannot fill on schedule all DO rated orders which he has accepted and scheduled for delivery, he must give precedence over any other DO rated order to any DO rated order which bears a program identification consisting of the letter A, B, C, or E followed by a digit, unless the person who placed such order having such letter identification otherwise consents in writing.

SEC. 16. *Mandatory orders and directives.* Every person shall comply with each mandatory order and directive issued to him by NPA. Mandatory orders and directives issued by NPA take precedence over rated orders previously or subsequently received, unless a contrary instruction appears in the mandatory order or directive.

SEC. 17. *Use or disposition of material acquired under this regulation.* (a) Any person who gets material with a rating or through a specific authorization or a directive of NPA must, if possible, use or dispose of it (or of the product into which it has been incorporated) for the purpose for which the assistance was given. However, material obtained with any DO rating may be used to fill any DX rated order, or to fill any order which is entitled to precedence under section 15 (d) of this regulation. Physical segregation is not required as long as the restrictions applicable to any specific lot of material or product are observed with respect to an equivalent amount of the same material or product.

(b) The restriction in paragraph (a) of this section does not apply when a material, or a product into which it has been incorporated, can no longer be used for the purpose for which the priority assistance was given; for example, when the assistance was given to fill a particular order and the material or product does not meet the customer's specifications or the contract order is cancelled. In such cases the rules on further use or disposition in paragraph (c) of this section must be observed.

(c) The holder of a material or product subject to paragraph (b) of this section may sell it as long as he complies with all requirements of other applicable sections of this regulation and of other orders and regulations of NPA, or he may use it himself in any manner or for any purpose as long as he complies with such requirements.

SEC. 18. *Delivery for unlawful purposes prohibited.* No person shall deliver any material which he knows or has reason to believe will be accepted, redelivered, held, or used in violation of any order or regulation of NPA.

SEC. 19. *Intracompany deliveries.* The provisions of this regulation apply not only to deliveries to other persons, including affiliates, and subsidiaries, but also to deliveries from one branch, division, or section of a single enterprise to another branch, division, or section of the same or any other enterprise under common ownership or control.

SEC. 20. *Inventory restrictions on materials acquired with a rating.* The inventory restrictions described in all NPA regulations and orders (including CMP Regulation No. 2) apply to all materials subject thereto.

SEC. 21. *Scope of regulations and orders.* (a) All regulations and orders of NPA (including directions, directives, and other instructions) apply to all subsequent transactions even though they are covered by contracts previously entered into. Regulations and orders apply to transactions in the territories or insular possessions of the United States unless the regulation or order specifically states that it is limited to the continental United States or to the 48 States and the District of Columbia. However, restrictions of NPA orders or regulations on the use of material or on the amount of inventory shall not apply when the material is used or the inventory is held directly by the Department of Defense outside the 48 States and the District of Columbia, unless otherwise specifically provided.

(b) All orders and regulations of NPA which control the sale, transfer, or delivery of any material, product, or equipment, apply to sales made by any person, whether for his own account or for the account of others, and all restrictions upon accepting delivery apply to acceptance of delivery at any type of sale, including sales made by auctioneers, receivers, and trustees in bankruptcy, and in other cases where the assets of a business are being liquidated.

SEC. 22. *Defense against claims for damages.* No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with any regulation or order of NPA (including any direction, directive, or other instruction), notwithstanding that any such regulation or order shall thereafter be declared by judicial or other competent authority to be invalid.

SEC. 23. *Records.* Each person participating in any transaction covered by this regulation shall retain in his possession for at least 2 years records of receipts, deliveries, inventories, and use, in sufficient detail to permit an audit that determines for each transaction that the provisions of this regulation have been met. This does not specify any particular accounting method and does not require alteration of the system of records customarily maintained, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

SEC. 24. *Audit and inspection.* All records required by this regulation shall be made available at the usual place of business where maintained for inspection and audit by duly authorized representatives of NPA.

SEC. 25. *Reports.* Persons subject to this regulation shall make such records and submit such reports to NPA as it shall require, subject to the terms of the Federal Reports Act of 1942 (5 U. S. C. 139–139F).

SEC. 26. *Applications for adjustment and exception.* Any person affected by this regulation may file an application for adjustment or exception upon the ground that it works an undue or exceptional hardship upon him not suffered generally by others in the same trade or

industry or that its application to him would not be in the interest of the national defense or in the public interest. In examining requests for adjustment claiming that the public interest is prejudiced by the application of any provision of this regulation, consideration will be given to the requirements of the public health and safety, civilian defense, and dislocation of labor and resulting unemployment that would impair the defense program. Applications shall be in writing, filed in triplicate with NPA, Washington 25, D. C., Ref: NPA Reg. 2, and shall set forth all pertinent facts, the nature of the relief sought, and the justification therefor.

SEC. 27. *Communications.* All communications concerning this regulation shall be addressed to the National Production Authority, Washington 25, D. C., Ref: NPA Reg. 2.

SEC. 28. *Violations.* Any person who wilfully violates any provision of this regulation or any other regulation or order of NPA, or who furnishes false information or conceals any material fact in the course of operation under any such regulation or order, is guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person to suspend his privilege of making or receiving further deliveries of materials or using facilities under priority or allocation control and to deprive him of further priorities assistance.

NOTE: All reporting and record-keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

NPA Reg. 2 as amended shall take effect on September 13, 1951.

NATIONAL PRODUCTION AUTHORITY,
By JOHN B. OLVERSON,
*Recording Secretary.*

LIST A

1. The following items are not subject to any DO ratings issued by or under the authority of NPA at the present time and therefore DO ratings shall not be effective to obtain them:

Communications services.
Crushed stone.
Gravel.
Sand.
Scrap.
Slag.
Steam heat, central.
Transportation services, other than those referred to in subdivision 2 of this list.
Waste paper.
Water.
Wood pulp.

2. Allocation and distribution of the items listed or referred to below are subject to regulation by other Government agencies and such items are therefore not subject to ratings issued by or under the authority of NPA. However, producers of such items are subject to NPA regulations with respect to other materials used by them.

(a) Solid fuels: [1] All forms of anthracite, bituminous, subbituminous, and lignitic coals, and coke and its byproducts.

(b) Gas and gas pipelines: [1] Natural gas, manufactured gas, and pipelines for the movement thereof.

(c) Petroleum and petroleum pipelines: [1] Crude oil, synthetic liquid fuel, their products and associated hydrocarbons, including pipelines for the movement thereof.

(d) Electric power: [1] All forms of electric power and energy.

(e) Radioisotopes, stable isotopes, source and fissionable materials.[2]

(f) Farm equipment: [3] Domestic distribution of equipment manufactured for use on farms in connection with the production or processing of food. Such equipment includes, but is not limited to, the items listed in Schedule I of NPA Order M-55A as the same may be amended or supplemented from time to time.

(g) Fertilizer, commercial: [3] In form for distribution to users.

(h) Food, except in certain cases where used industrially: [3] In general, foods and other agricultural commodities and products are within the jurisdiction of the Department of Agriculture, but those which have industrial uses are within the jurisdiction of NPA when they lose their identity as food or agricultural commodities or products. The respective jurisdictions of the Department of Agriculture and NPA are described generally (and in certain cases, specifically) in an Agreement between the Production and Marketing Administration (Department of Agriculture) and NPA signed on March 30 and April 13, 1951, respectively (16 F. R. 3410), which agreement is referred to in NPA Delegation 10 of April 26, 1951 (16 F. R. 3669).

The Agreement (reference to which should be made) does not attempt to list all foods and agricultural commodities and products which involve industrial uses but does cover the major items as to which there might be a question of jurisdiction. In general, the respective jurisdictions fall within the following categories:

(1) Commodities which are within the jurisdiction of the Department of Agriculture until they enter any manufacturing process which results in their being neither food nor agricultural commodities or products (certain examples of which are listed in the Agreement, such as egg products, fats, oils, grain and grain products, molasses, potatoes, spices, starches, sugar, and tartaric acid).

(2) Commodities which are within the jurisdiction of the Department of Agriculture until the point specified in the Agreement (such as cotton lint and linters, hemp, flax, fiber, skim milk for casein, wool, and mohair).

(3) Commodities which are within the exclusive jurisdiction of the Department of Agriculture (ice, naval stores, tobacco, and tobacco products).

(i) Transportation services (domestic), storage and port facilities.[4]

(j) Products (production and distribution) used in the petroleum industry and listed in NPA Delegation 9 (Feb. 26, 1951), as follows: [5]

(1) Tetraethyl lead fluid.
(2) Petroleum cracking catalysts.
(3) Special inhibitors used in gasoline.
(4) Lubricating oil additives.
(5) Fluids and additives made especially for oil and gas drilling, and demulsifiers.

(k) Ores, minerals, concentrates, residues, and other products (until processing is completed) listed in NPA Delegation 5 (May 22, 1951).[6]

[F. R. Doc. 51-11227; Filed, Sept. 13, 1951; 4:24 p. m.]

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[NPA Regulation 2, Direction 2]

REG. 2—BASIC RULES OF THE PRIORITIES SYSTEM

DIR. 2—STATUS OF CERTAIN DELIVERY ORDERS DURING THE THIRD QUARTER

This direction under NPA Reg. 2 is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this direction, consultation with industry representatives has been rendered impracticable due to the need for immediate action and because the direction affects many different industries.

SECTION 1. Notwithstanding the provisions of section 3 of NPA Reg. 2, a DO rated order with a program identification consisting of a letter and one digit (for example, DO-K5) or consisting of two or more letters (for example, DO-SU) which calls for delivery during the third calendar quarter of 1951, takes priority over a DO rated order with a program identification consisting of two digits (for example, DO-39), except that this priority does not apply to a DO rated order with any of the following program identifications:

| | | | |
|---|---|---|---|
| DO-22 | DO-45 | DO-48 | DO-62 |
| DO-38 | DO-46 | DO-49 | DO-96 |
| DO-41 | DO-47 | DO-51 | |

SEC. 2. The priority provided for in section 1 of this direction shall not apply to orders calling for delivery on or after October 1, 1951. In the case of such orders, DO rated orders with a program identification consisting of any two digits shall have equal preferential status with any other DO rated orders.

(Sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U. S. C. App. Sup. 2071; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.; sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61)

This direction shall take effect on September 13, 1951.

NATIONAL PRODUCTION AUTHORITY,
By JOHN B. OLVERSON,
*Recording Secretary.*

[F. R. Doc. 51-11225; Filed, Sept. 13, 1951; 4:24 p. m.]

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[CMP Regulation No. 3, as amended September 13, 1951]

CMP REG. 3—PREFERENCE STATUS OF DELIVERY ORDERS UNDER THE CONTROLLED MATERIALS PLAN

This regulation as amended is found necessary and appropriate to promote the national defense and is issued pur-

[1] Under jurisdiction of the Department of the Interior—E. O. 10161, 15 F. R. 6105; E. O. 10200, 16 F. R. 61; DPA Del. 1, 16 F. R. 738.

[2] Under jurisdiction of the Atomic Energy Commission—60 Stat. 755; 42 U. S. C. et seq.

[3] Under jurisdiction of the Department of Agriculture—E. O. 10161, 15 F. R. 6105; E. O. 10200, 16 F. R. 61; DPA Del. 1, 16 F. R. 738.

[4] Under jurisdiction of the Interstate Commerce Commission—E. O. 10161, 15 F. R. 6105; E. O. 10200, 16 F. R. 61; DPA Del. 1, 16 F. R. 738.

[5] Under jurisdiction of the Department of the Interior—NPA Delegation 9, 15 F. R. 1908.

[6] Under jurisdiction of the Department of the Interior—NPA Delegation 5, 15 F. R. 4907.

suant to the Defense Production Act of 1950, as amended. In the formulation of this regulation, as amended, consultation with industry representatives has been rendered impracticable because of the need for immediate action and because the regulation affects almost all trades and industries.

This amendment affects CMP Regulation No. 3 by substituting a new paragraph (f) in section 6. As so amended CMP Regulation No. 3 reads as follows:

Sec.



AUTHORITY: Sections 1 to 11 issued under sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U. S. C. App. Sup. 2071; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.; sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61.

SECTION 1. *What this regulation does.* The purpose of this regulation is to define, under the Controlled Materials Plan, the preference status of delivery orders for controlled materials and delivery orders for products and materials other than controlled materials.

SEC. 2. *Definitions.* As used in this regulation and any other CMP regulation (unless otherwise indicated):

(a) "Production material" means, with respect to any person, any product (including fabricated parts and subassemblies) or any material (excluding controlled material) which will be physically incorporated into his product, and includes the portion of such material normally consumed or converted into scrap in the course of processing. It also includes: (1) Containers and packaging materials required to make delivery of his products, (2) chemicals used directly in the production of his products, and (3) items which he purchases for resale to round out his line, if such items do not represent more than 10 percent of his estimated total sales receipts in a calendar quarter for which he files an application for allotment. It does not include any items purchased by him as manufacturing equipment, or for maintenance, repair, or operating supplies as defined in CMP Regulation No. 5.

(b) "Allotment number" or "allotment symbol" means an allotment number or symbol placed on a delivery order pursuant to this regulation or any other regulation or order of NPA which expressly provides for the use of such allotment number or symbol.

SEC. 3. *General status of delivery orders.* (a) To the extent consistent with this regulation, the provisions of NPA Reg. 2 apply to all delivery orders except authorized controlled material orders.

(b) A delivery order pursuant to a directive issued by NPA shall take precedence over any other delivery order (including an authorized controlled material order) previously or subsequently received, unless a contrary instruction appears in the directive.

SEC. 4. *Status of delivery orders for controlled materials.* (a) All authorized controlled material orders (as defined in section 2 (q) of CMP Regulation No. 1) shall have equal preferential status and shall take precedence over other delivery orders for controlled material previously or subsequently received.

(b) All delivery orders for controlled material bearing DO ratings, calling for delivery before October 1, 1951, shall have equal preferential status and shall take precedence over other delivery orders for controlled material previously or subsequently received, except authorized controlled material orders.

(c) A delivery order for controlled material (whether or not it bears a DO rating) calling for delivery after June 30, 1951, may be converted into an authorized controlled material order in accordance with the provisions of section 19 of CMP Regulation No. 1, except that where an allotment symbol (such as the symbol MRO provided for in CMP Regulation No. 5) is to be applied to a delivery order under this paragraph, the certification provided in the applicable regulation or order of NPA shall be used. A delivery order for controlled material calling for delivery after June 30, 1951, which has been converted into an authorized controlled material order shall be scheduled for delivery on the original delivery date, unless the person who placed such order agrees to a different delivery date.

SEC. 5. *Status of delivery orders for products or materials other than controlled materials.* (a) All delivery orders for products or materials other than controlled materials to which both a DO rating and an allotment number or symbol have been applied, calling for delivery before October 1, 1951, shall have equal preferential status and shall take precedence over other delivery orders for products or materials other than controlled materials previously or subsequently received.

(b) All delivery orders for products or materials other than controlled materials bearing a DO rating, whether or not an allotment number or symbol has been applied, calling for delivery on or after October 1, 1951, shall have equal preferential status and shall take precedence over other delivery orders for products or materials other than controlled materials previously or subsequently received.

(c) A delivery order for products or materials other than controlled materials (whether or not it bears a DO rating) calling for delivery after June 30, 1951, may be converted into a delivery order bearing a DO rating with an allotment number or symbol either by (1) furnishing a revised copy of the order showing a DO rating with the appropriate allotment number or symbol, or (2) furnishing in writing information clearly identifying the order and setting forth a DO rating with the appropriate allotment number or symbol. Such delivery order or confirmation having a DO rating with an allotment number must also bear the certification provided in section 6 (d) of this regulation, and such delivery order or confirmation having a DO rating with an allotment symbol (such as the symbol MRO provided for in CMP Regulation No. 5) must also bear the certification provided in the applicable regulation or order of NPA. A delivery order for products or materials other than controlled materials calling for delivery after June 30, 1951, which has been converted into a delivery order bearing a DO rating with an allotment number or symbol shall be scheduled for delivery on the original delivery date, unless the person who placed such order agrees to a different delivery date.

SEC. 6. *How DO ratings and allotment numbers are assigned and used to obtain products or materials other than controlled materials.* (a) When a production schedule of a prime consumer making class A or class B products is authorized and a related allotment is made to him by a Claimant Agency or an Industry Division, a DO rating shall be assigned to such schedule by such Claimant Agency or Industry Division for use with the related allotment number.

(b) When a production schedule of a secondary consumer making class A products is authorized and a related allotment is made to him by the prime or secondary consumer for whom such products are to be made, the consumer making the allotment shall apply or extend a DO rating to such schedule for use with the related allotment number.

(c) A prime or secondary consumer who has received a DO rating for an authorized production schedule as provided in this section, and a controlled materials producer who has received a DO rating pursuant to section 21 of CMP Regulation No. 1, may use such rating with the related allotment number on delivery orders, only to acquire production materials in the minimum practicable amounts required, and on a date or dates no earlier than required, to fulfill such schedule, or to replace in his inventory production materials used to fulfill authorized production schedules.

(d) A delivery order placed pursuant to paragraph (c) of this section must contain, in addition to a DO rating with an allotment number, a certification in the following form: "Certified under CMP Regulation No. 3," which shall be signed manually or as provided in NPA Reg. 2. This certification shall constitute a representation to the supplier and to NPA that the purchaser is authorized to place an order under the provisions of this regulation to obtain the products or materials covered by the delivery order.

(e) A person placing a delivery order for products or materials other than controlled materials, required for maintenance, repair, or operating supplies, or for minor capital additions, pursuant to CMP Regulation No. 5, shall place there-

on a DO rating with the allotment symbol MRO together with the certification provided in CMP Regulation No. 5.

(f) A manufacturer of Class B products who has received an authorized production schedule with a DO rating and an allotment symbol from an Industry Division or a Claimant Agency shall not extend any DO rating received by him from a customer for such production, but he may extend any DX rating which he receives, to the extent permitted by NPA Reg. 2.

(g) A person who receives a delivery order bearing a DO rating with an allotment number or symbol for any product or material (other than controlled material) which is not manufactured by him, or which is manufactured by him but for the manufacture of which he has received no authorized production schedule, may extend such DO rating to the extent permitted by NPA Reg. 2, and if he does so he shall use such allotment number or symbol and the form of certification prescribed in paragraph (d) of this section.

(h) Purchase requirements for products or materials other than controlled materials covered by a DO rating with an allotment number or symbol may be combined with those which are unrated and/or which are covered by a DO rating without an allotment number or symbol. If this procedure is followed each item covered by a rating must be specifically identified by placing the applicable rating alongside the related item, and such delivery order must contain the certification provided in paragraph (d) of this section. Such single certification shall constitute a representation to the supplier and to NPA that the purchaser is authorized to place the order under all applicable regulations and orders of NPA.

(i) No person shall place any allotment number or symbol on any delivery order for products or materials other than controlled materials, except as provided in this section or as specifically provided in any other regulation or order of NPA.

SEC. 7. *Applicability of other regulations and orders.* Nothing in this regulation shall be construed to relieve any person from complying with all other applicable regulations and orders of NPA.

SEC. 8. *Records and reports.* Persons subject to this regulation shall maintain such records and submit such reports to NPA as it shall require, subject to the terms of the Federal Reports Act of 1942.

SEC. 9. *Applications for adjustment or exception.* Any person subject to any provision of this regulation may file a request for adjustment, exception, or other relief upon the ground that such provision works an undue or exceptional hardship upon him not suffered generally by others in the same trade or industry, or that its enforcement against him would not be in the interest of the national defense or in the public interest. In examining requests claiming that the public interest is prejudiced, consideration will be given to the requirements of public health and safety, civilian defense, and dislocation of labor and resulting unemployment that would impair the defense program. Each request shall be in writing submitted in triplicate, shall set forth all pertinent facts and the nature of the relief sought, and shall state the justification therefor.

SEC. 10. *Communications.* All communications concerning this regulation shall be addressed to the National Production Authority, Washington 25, D. C., Ref: CMP Regulation No. 3.

SEC. 11. *Violations.* Any person who wilfully violates any provision of this regulation or any other regulation or order of the National Production Authority, or who wilfully conceals a material fact or furnishes false information in the course of operation under this regulation, is guilty of a crime and, upon conviction, may be punished by fine or imprisonment, or both. In addition, administrative action may be taken against any such person to suspend his privilege of making or receiving further deliveries of materials or using facilities under priority or allocation control and to deprive him of further priorities assistance.

NOTE: All reporting and record-keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

This regulation, as amended, shall take effect on September 13, 1951.

NATIONAL PRODUCTION AUTHORITY,
By JOHN B. OLVERSON,
*Recording Secretary.*

[F. R. Doc. 51-11226; Filed, Sept. 13, 1951; 4:24 p. m.]

# PROPOSED RULE MAKING

## DEPARTMENT OF AGRICULTURE

### Production and Marketing Administration

### [ 7 CFR Part 996 ]

[Docket No. AO-203-A2]

HANDLING OF MILK IN SPRINGFIELD, MASS., MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED ORDER AMENDING ORDER NOW IN EFFECT

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Springfield, Massachusetts on April 9, 1951, pursuant to notice thereof which was issued on March 14, 1951 (16 F. R. 2526), upon proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Springfield, Massachusetts, marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Administrator, Production and Marketing Administration, on July 13, 1951, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision and opportunity to file written exceptions thereto which was published in the FEDERAL REGISTER on July 20, 1951 (16 F. R. 7050, Doc. 51-8323).

*Rulings.* Within the period reserved for exceptions, interested parties filed exceptions to certain of the findings, conclusions, and actions recommended by the Assistant Administrator. In arriving at the findings, conclusions, and regulatory provisions of this decision, each of such exceptions was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings, conclusions, and actions decided upon herein are at variance with the exceptions, such exceptions are overruled.

The material issues entered on the record of the hearing were whether:

(1) The definition for outside milk should be revised.

(2) The language of the order should be revised to provide for the same treatment of Lowell-Lawrence pool milk as is accorded Worcester pool milk received at a Springfield regulated plant.

(3) The provisions dealing with pool plant qualifications should be revised.

(4) The assignment provisions should be revised to provide for the assignment of out-of-area Class I sales made from a handlers' country plant to receipts of producer milk at such plant, to change the assignment sequence with reference to receipts of skim milk and to provide an assignment for milk not otherwise covered.

(5) Any changes made in the basis of determining the Class II price and the butterfat differential under the Boston order should be incorporated in the Springfield order.

(6) Required payments on outside milk should be eliminated under certain circumstances.

(7) A method for computing a composite wage index for use in the Class I formula should be provided.

(8) The operator of a milk plant should be made the responsible handler with respect to payment, reporting, and other obligations imposed by the order for all milk and milk products received at such plant.

(9) Producer milk under the Boston, Lowell-Lawrence, or Worcester orders diverted to a Springfield pool plant should be excluded as producer milk under the Springfield order.

(10) The definition of buyer-handler should be amended to require the dis-

position of more than 10 percent of such a handler's total receipts of fluid milk products, other than cream, as Class I milk in the marketing area.

(11) The requirement that milk moved by buyer-handlers to other plants be classified as Class I should be revised.

(12) There should be excluded from the current pool computation milk of any nonpool handler in noncompliance with reference to the payment or reporting provision.

(13) Credits should be granted a handler for payments made to the Boston pool in the computation of such handler's pool obligation.

(14) Certain other nonsubstantive changes should be made to delete obsolete language and to make the language of the Springfield order consistent with that of other market orders.

*Findings and conclusions.* From the evidence introduced at the hearing and the record thereof with respect to the afore-mentioned issues it is hereby found and concluded that:

(1) The proposal to include as outside milk all receipts from New York order pool plants which are classified as other than I–A or I–B under the New York order should be adopted. Under the present provisions of the order receipts from New York order pool plants are specifically excluded from the outside milk definition and it is therefore possible for Springfield handlers to utilize New York Class I–C or Class III milk without being subject to the equalization payment on milk. The order presently prevents the replacement of local producer milk by New York Class I–C or Class III milk in the plant of a Springfield pool handler since it is specifically provided that such receipts shall be assigned to Class II. However, milk moving from a New York order pool plant to the nonpool plant of a Springfield producer-handler, or a buyer-handler, located outside of the marketing area would be Class I–C under the New York order and would not be subject to the equalization payment to the Springfield pool. Likewise a similar movement of concentrated milk, buttermilk, milk drinks and any other item classified as Class III under the New York order can be utilized by a producer-handler or buyer-handler without payment to the Springfield pool. In order to maintain a Class I price on all milk disposed of in Springfield, New York milk classified as other than I–A or I–B under the New York order should be considered outside milk.

The outside milk definition should further be revised to except receipts from producer-handlers and buyer-handlers under the Boston, Lowell-Lawrence and Worcester orders. Such receipts, except the own farm production of producer-handlers are now considered outside milk. Under the assignment provision receipts of outside milk are assigned after receipts from New York, Boston, and Worcester pool handlers, receipts from other Springfield handlers and direct producer receipts. Accordingly, buyer-handlers and producer-handlers from other New England Federal markets are at a disadvantage, as compared to pool handlers in such markets, in furnishing milk to Springfield handlers. Since the Boston, Lowell-Lawrence and Worcester orders provide that a buyer-handler or producer-handler pay the outside milk assessment on all receipts of outside milk in excess of his Class II disposition there is no possibility of such an individual in one of these markets obtaining milk for Class I disposition in the Springfield market at a lower cost than pool handlers. Under these circumstances receipts from such handlers should be accorded the same treatment as receipts from pool handlers operating in the same market.

(2) The present order provisions should be revised to provide the same treatment for milk moved from Lowell-Lawrence pool plants as is accorded milk moved from Worcester pool plants to a Springfield regulated plant. At the time the Springfield order became effective the Lowell-Lawrence market was operating under an individual handler pool. With a market-wide pool in Lowell-Lawrence the incentive to transfer excess milk from Lowell-Lawrence to Springfield has been reduced. The Lowell-Lawrence order provides that receipts of fluid milk products, other than cream, from regulated plants under the Springfield and Worcester orders be assigned to Class I unless Class II is agreed upon in writing to the market administrator and an equivalent disposition in Class II actually occurred at the receiving plant. The same type of reciprocal arrangement should be provided in the order so that the treatment of milk under the three secondary markets is consistent.

(3) The provisions dealing with qualifications for pool plants should be amended to specificially exclude from pool plant status during the months of March through September any of a handler's plants which were nonpool receiving plants during any of the preceding months of October through February. Under the present order provisions it is possible that a handler's city plant located outside of the marketing area could be a nonpool plant during the months of October through February and then because of increased Class I disposition from such plant within the marketing area during the months of March through September qualify as a pool plant during such months. At the same time dairy farmers delivering to such plant would not qualify as producers since they would have delivered to a nonpool plant during the October–February period. Under such circumstances the handler would be under substantial obligation to the pool since he would be charged the use value of all of the milk in his plant and credited with payment for such milk at the Class II price. Such a situation could raise complications in the administration of the order and result in serious financial loss to the handler involved. As an unregulated plant the pool obligation would be limited to payment of the difference between the Class I and Class II price on only that volume of milk disposed of as Class I milk direct to consumers within the marketing area. The adoption of the proposed language protects unregulated dealers from unreasonable obligation to the pool while at the same time assuring producers reasonable protection from sales of unregulated milk and provides uniform treatment of such milk under both the Springfield and Lowell-Lawrence orders.

The proposal to amend the country pool plant qualification provisions to lower the percentage of total milk receipts required to be disposed of in the marketing area should be adopted. The order presently provides that a country plant dispose of 50 percent of its total receipts of fluid milk products, other than cream, as Class I milk directly to consumers in the marketing area, or as milk to city plants under the Springfield or Worcester orders at which more than 50 percent of the total receipts of fluid milk products, other than cream, is disposed of as Class I milk. It was proposed that the shipping requirement be lowered from 50 percent to 30 percent. At the present time the Brattleboro, Vermont plant of H. P. Hood & Sons is the only country plant associated with the Springfield market and little, if any, milk is disposed of in the Worcester market. Therefore, the opportunity to use shipments to Worcester to meet the qualifying percentage has little significance and should be deleted. Proponents contend that it is becoming increasingly difficult to maintain pool status for this plant under the present 50 percent shipping requirement. They further contend that in order to retain pool plant status for this plant in recent months they have been forced to release a number of direct shippers at their city plant. A country receiving plant which functions as a reserve plant for the market, should not be forced to ship milk to the city when such milk is not actually needed there to meet market requirements. On the other hand, a plant with only casual association with the market should not be accorded continuing pooling privileges. The record evidence tends to support proponents in their position that the Springfield market has first call on the milk at the Brattleboro plant and that such milk moves to the city whenever it is needed. Lowering the shipping requirement from 50 percent to 30 percent will simplify the qualification of the Brattleboro plant and at the same time protect the pool from new plants interested in the advantage of pooling without taking on the responsibility of supplying the local market. If, at any time, it becomes evident that the Brattleboro plant is not fulfilling its responsibility to the Springfield market by making its entire supply of milk available as needed, consideration should be given to more stringent pool plant qualifications.

(4) The present assignment provisions of the order should be amended to provide for the assignment of out of area Class I sales made from a handler's country plant to receipts of producer milk at such plant and the sequence of assignment should be revised in other respects. Under the present order provisions a handler's Class I sales are assigned to producer receipts at his city plant ahead of the assignment of receipts at his country plant. It is possible under this procedure that a handler

operating both a country and a city plant may have a portion of his milk disposed of from his country plant as out of area Class I sales charged to him at the country plant price and the balance of such sales charged at the city plant price. This situation would arise only when the volume of milk at the city plant exceeds the Class I demand for such milk. At such time the balance of the city plant supply, in excess of Class I requirements, plus the volume of producer receipts held at the country plant ordinarily would be utilized as Class II unless an out of area Class I market is found for such milk. The assignment of such sales from the country plant to receipts at such plant maintains the relationship between milk prices at the two plants as established by the order since the difference in price is based on the cost of movement to Springfield.

The present allocation provisions should be revised to provide for the assignment of receipts of skim milk from all regulated plants after receipts of producer milk and outside milk at a handler's plant. Under the present assignment procedure receipts of skim milk from the regulated city plants of other handlers take precedence over producer receipts, receipts of outside milk, and receipts of milk from the country pool plants of other handlers. This assignment sequence creates confusion between handlers in the pricing of skim milk and necessitates numerous price adjustments, since skim milk is a Class II product and is usually transferred for Class II use. Changing this sequence in no way affects the total value of the pool but merely transfers the Class I accounting in the pool from one city plant handler to another.

It is possible that a handler may have milk in his plant from sources other than those specifically referred to in the present assignment provisions. This might take the form of unidentified milk, reconstituted milk, or milk in inventory. The inclusion of a catch-all assignment provision should be adopted to assure the assignment of all milk and milk products in the handler's plant.

The assignment of fluid milk products, other than cream, received from a Worcester pool plant should be allowed on an agreement basis between the Worcester and Springfield handlers without regard to outside milk receipts. The present provisions provide that assignment by agreement to Class II be limited to that remaining Class II utilization in the Springfield handler's plant after deduction of its receipts of outside milk. Permitting the assignment as Class II, up to the total volume of Class II use in the Springfield plant, will allow the two handlers involved to determine by agreement which producers will get credit for the Class I sales and will not affect the over-all costs of the milk involved. Since producers supplying both markets are located in the same general supply area, the producers are in position to shift from one market to the other if handlers were to agree upon a utilization which would maintain one market price to producers substantially higher than the other.

(5) The proposal to make such changes in the Class II pricing provisions as are necessary to maintain the present relationship to the Boston Class II price should be adopted. The present basis of Class II pricing was established so that the Springfield Class II price would move with the price of milk for similar use in the Boston market. For the same reasons that the present relationship was established, it is essential that any changes made in the Boston Class II pricing be reflected in the Springfield Class II pricing. Similarly, the method of determining the butterfat differential in the Springfield market has been the same as that used in other Federal orders effective in the New England region. Accordingly, in the computation of the butterfat differential the weight of a can of 40 percent cream should be considered 33 pounds, rather than the 33.48 pounds presently used. Certain producer interests proposed that in the computation of the butterfat differential the 1.5 cents transportation allowance be deleted. They contend that the factor represents a freight adjustment and since in the Springfield market the bulk of the milk is received at the city plants, no allowance is justified. However, there is also a substantial portion of the total producer milk received at country plants. There appear to be certain advantages to maintaining one butterfat differential for all locations but whether it should be determined with or without the 1.5-cent factor is not clear from this record.

The evidence in the record on this point is not conclusive. Accordingly, no further change can be considered on the basis of this record.

(6) No change should be made in the present order provisions with reference to the equalization payments required on outside milk. Proponents proposed that the order be amended to provide that the outside milk payment be invalidated during any period in which an emergency is declared under the Boston order. In this connection it does not necessarily follow that an emergency will exist in the secondary markets at any time that there is an emergency in the Boston market. If a provision of the nature proposed were desirable, it should take the form of an independent determination with specific reference to the Springfield market.

(7) The order should provide for the computation of a composite wage rate index which would be similar to the farm-wage rate index which has been utilized in the calculation of the Class I formula price since the adoption of that formula April 1, 1948. The United States Department of Agriculture is no longer collecting information from which the monthly composite wage rates were computed and that series has been discontinued. Therefore, it is necessary to compute an equivalent composite farm wage rate. Farm wage rates are recorded quarterly by the United States Department of Agriculture as rates per month with board and room, per month with house, per week with board and room, per week without room or board, and per day without board or room. These rates should be expressed as a simple average monthly composite rate by converting the weekly rates to a monthly equivalent by multiplying by 4.33 weeks and by converting the daily rate to a monthly basis by using 26 working days per month. The simple average monthly composite farm wage rates for each of the four states used in the Class I formula should be combined according to the rate expressed in the order. In order to express the rate as an index on the same basis as that used in converting the previously published monthly composite farm wage rate to an index number for computation of the formula price, it is necessary to divide the milkshed average composite wage rate figure by 0.6394. This factor is determined from the average relationship of the milkshed average wage rate figure derived from the currently published data to this series which was previously published and used in the computation of the formula price.

(8) The proposal to amend the order to provide that the operator of a milk plant be the responsible handler with respect to payment, reporting, and other obligations under the order for all milk and milk products received at such plant should be adopted. The operator of a plant is the only person who can reasonably be held responsible for the weighing and testing of producers' milk. He has control of the receiving function and logically should be responsible for maintaining proper records of such receipts and for proving the utilization thereof. Since payments to producers are made on the basis of weights and tests of the receiving plant, as verified by the market administrator, the operator of such plant should be held responsible for paying producers and for other obligations imposed by the order upon a handler. Milk temporarily diverted from the pool plant of a handler for the account of such handler should be considered as having been received at the pool plant since producers of such milk would ordinarily be regular suppliers of the market and as such should be assured the market blend price for their milk. However, in accounting for such mil' the records of the handler actually receiving the milk would be relied upon to prove receipts and tests even though the handler who diverted such milk to a nonpool plant would be responsible for making such records available.

It was proposed that bulk milk of dairy farmers which is received at a pool plant for processing and for which an equivalent volume of milk is returned to the dairy farmer be considered exempt milk. There was no objection to the exemption of such milk from the market pool. The number of persons and the quantity of milk involved in this type of transaction is small and apparently does not adversely affect the stability of the market. It is concluded, therefore, that such milk of a dairy farmer which is delivered to a pool handler for processing and for which an equivalent volume of bottled milk is returned should be considered exempt milk and not included in the pool. In cases where the volume of milk received from a dairy farmer is in excess of the volume of bottled milk returned, such excess milk disposed of to the pool

handler should be considered as producer milk.

Under the present order provisions a handler under certain conditions is permitted to process and bottle milk for another handler without regarding such milk as outside milk or involving the other handler in the market pool because of the processing transaction. This principle should be continued as it applies to handlers or dealers who operate plant facilities and actually receive at such plant the milk which is transferred to the plant of a handler for processing and bottling and for which an equivalent volume of milk is actually returned. The verification of the receipts and disposition necessary to substantiate the exempt status of such milk involves the same type of audit of handlers' records as in the case of producer milk, and it is therefore concluded that such milk should be subject to the administration assessment and bear its proportionate share of administrative costs.

(9) The proposal to amend the producer definition to provide that a dairy farmer who is a producer under the Boston, Lowell-Lawrence, or Worcester orders shall not be a producer under the Springfield order with regard to any of his Boston, Lowell-Lawrence, or Worcester pool milk diverted to a Springfield pool plant should be adopted. Under the present order provisions such diversions could result in a dairy farmer being considered a producer both at the plant from which his milk is diverted and at the Springfield pool plant. Such a situation could involve unreasonable financial costs to the handler if he were required to pool the milk under both pools. The adoption of the proposal will facilitate the disposition of surplus milk by enabling more efficient handling in movements between markets and at the same time provide Springfield producers the same protection they enjoy under the present order provisions.

(10) The proposal to amend the definition of a buyer-handler to require the disposition of more than 10 percent of the total receipts of fluid milk products, other than cream, as Class I milk in the marketing area should be adopted. Handlers who have only a casual association with the market, that is do less than 10 percent of their Class I business in the marketing area, should not acquire buyer-handler status. A buyer-handler, as a regulated handler, must have sufficient pool milk to cover all of his Class I sales, both within and without the marketing area, or pay the outside milk payment on whatever Class I utilization is in excess of his supply of pool milk. An unregulated handler, on the other hand, need have pool milk to cover, or pay the outside milk payment on, only that volume of Class I milk disposed of within the marketing area.

Under this provision all sales by a pool handler to an individual doing less than 10 percent of his Class I business in the area will be Class I up to the extent of such use by such unregulated handler.

The order presently provides that any city plant meeting the basic qualifications for pooling shall be a pool plant in only those months in which at least 10 percent of its total receipts of fluid milk products, other than cream, is disposed of as Class I milk in the marketing area. Since different treatment is prescribed for pool and nonpool handlers, it is essential that a handler be in a position to determine readily his status as a pool handler. In this connection the final classification of milk transferred between handlers is dependent on the actual utilization and source of all receipts in the transferee plant. Accordingly, in order to simplify the determination of a handler's pool status it should be provided that for such purpose the transfers of fluid milk products, other than cream, to a regulated city plant be considered as a disposition of Class I milk in the marketing area up to the quantity of Class I milk disposed of in the marketing area from such other plant.

(11) The proposal to revise the present order provisions which provide that milk moved by buyer-handlers to other plants be classified as Class I should not be adopted. Buyer-handlers get no milk direct from producers but purchase all of their requirements for fluid products from other handlers. Accordingly, they are in a position to maintain a day-to-day balance between their requirements and procurement. The present order provisions do not limit purchases for Class II use in the buyer-handler's plant but merely restrict the transfer of milk to a third plant for other than Class I use. Class II milk is defined and priced for the purpose of removing necessary excesses from the market. It appears that buyer-handlers do not need to purchase Class II milk in excess of their own use. To encourage a buyer-handler to buy long and permit free transfer to nonpool plants for Class II use could adversely affect producers by resulting in a lower classification for such milk than might otherwise be available through other outlets.

(12) The proposal to exclude from each current pool computation milk of any nonpool handler who is not in compliance with the reporting and payment provisions for any prior month should be adopted. The order presently has such a provision with reference to a pool handler in noncompliance. However, under the present order provision a nonpool handler in violation, because of nonreporting or nonpayment of assessments due, continues to be carried in the current pool computations. Under such arrangement it is possible that such indebtedness to the pool could actually reach the point of threatening the solvency of the pool. Exclusion of the milk of such nonpool handlers from the current pool computation assures the solvency of the settlement fund and at the same time does not relieve such nonpool handler of any of his obligations or responsibilities under the order.

(13) The proposal to amend the provisions dealing with the the computation of the value of milk utilized by a handler to credit any amount that such handler is required to pay to the Boston pool for milk disposed of in the Boston marketing area should not be adopted. This proposal was made on the premise that the Boston marketing area would be expanded to include specified military installations. Springfield handlers do not make direct distribution of milk in the present Boston marketing area. Therefore, there is nothing to be gained by the adoption of this proposal.

(14) The other proposals considered at the hearing involve nonsubstantive changes which would merely delete obsolete language or clarify the language of the present provisions. There was no opposition testimony and it is accordingly concluded that they should be adopted.

*General findings.* (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, will regulate the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in the proposed marketing agreement upon which a hearing has been held; and

(c) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to section 2 and section 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, are such as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

*Marketing agreement and order.* Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Springfield, Massachusetts, Marketing Area," and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Springfield, Massachusetts, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirement of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

*Order Directing the Conduct of a Referendum, Determination of Representative Period, and Designation of Referendum Agent*

Pursuant to section 8c (19) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 608c (19)), it is hereby directed that a referendum be conducted among producers (as defined in the order, as amended, and as hereby proposed to be further amended, regulating the handling of milk in the Springfield, Massachusetts, marketing area) who, during the month of June 1951 were engaged in the production of milk for sale in the marketing area specified in the aforesaid order, as amended,

and as hereby proposed to be further amended, to determine whether such producers favor the issuance of the order, as amended, which is a part of this decision of the Secretary of Agriculture.

The month of June 1951 is hereby determined to be the representative period for the conduct of such referendum.

Richard D. Aplin is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 20th day from the date this decision is issued.

*It is hereby ordered*, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as amended, and as hereby proposed to be further amended by the attached order which will be published with this decision.

This decision filed at Washington, D. C., this 11th day of September 1951.

[SEAL] CHARLES F. BRANNAN,
*Secretary of Agriculture.*

*Order[1] Amending the Order, as Amended, Regulating the Handling of Milk in the Springfield, Massachusetts, Marketing Area*

§ 996.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed amendment to the order, as amended, regulating the handling of milk in the Springfield, Massachusetts, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk produced for sale in the said marketing area as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

*Order relative to handling.* It is therefore ordered that on and after the effective date hereof, the handling of milk in the Springfield, Massachusetts, marketing area shall be in conformity to and in compliance with the following terms and conditions:

DEFINITIONS

§ 996.1 *General definitions.* (a) "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.)

(b) "Springfield, Massachusetts, marketing area", also referred to as the "marketing area", means the territory included within the boundary lines of the following Massachusetts cities and towns: Agawam, Chicopee, Easthampton, East Longmeadow, Holyoke, Longmeadow, Ludlow, Northampton, South Hadley, Springfield, Westfield, West Springfield, Wilbraham.

(c) "Order", used with the name of a marketing area other than the Springfield, Massachusetts, marketing area, means the order issued by the Secretary regulating the handling of milk in the other marketing area.

(d) "Month" means a calendar month.

§ 996.2 *Definitions of persons.* (a) "Person" means any individual, partnership, corporation, association, or any other business unit.

(b) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers and perform the duties of the Secretary of Agriculture.

(c) "Dairy farmer" means any person who delivers bulk milk of his own production to a plant.

(d) "Dairy farmer for other markets" means any dairy farmer whose milk is received by a handler at a pool plant during the months of March through September from a farm from which the handler, an affiliate of the handler, or any person who controls or is controlled by the handler, received nonpool milk on more than 3 days in any one of the preceding months of October through February, except that the term shall not include any person who was a producer-handler during any of the preceding months of October through February.

(e) "Producer" means any dairy farmer whose milk is delivered from his farm to a pool plant, except a dairy farmer for other markets and a dairy farmer with respect to exempt milk delivered. The term shall also include a dairy farmer with respect to his operation of a farm from which milk is ordinarily delivered to a handler's pool plant, but whose milk is diverted to another plant, if the handler, in filing his monthly report pursuant to § 996.30, reports the milk as receipts from a producer at such pool plant and as moved to the other plant.

The term shall not apply to a dairy farmer who is a producer under the Boston, Lowell-Lawrence, or Worcester orders, with respect to milk diverted from the plant subject to the other order to which the dairy farmer ordinarily delivers.

(f) "Association of producers" means any cooperative marketing association which the Secretary determines to be qualified pursuant to the provisions of the act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and to be engaged in making collective sales or marketing of milk or its products for the producers thereof.

(g) "Handler" means any person who in a given month, operates a pool plant, or any other plant from which fluid milk products are disposed of, directly or indirectly, in the marketing area.

(h) "Pool handler" means any handler who operates a pool plant.

(i) "Producer-handler" means any person who is both a handler and a dairy farmer, and who receives no milk other than exempt milk from other dairy farmers except producer-handlers.

(j) "Buyer-handler" means any handler who operates a bottling or processing plant from which more than 10 percent of his total receipts of fluid milk products, other than cream, are disposed of by him as Class I milk in the marketing area, and whose entire supply of fluid milk products is received from other handlers.

(k) "Dealer" means any person who operates a plant at which he engages in the business of distributing fluid milk products, or manufacturing milk products, whether or not he disposes of any fluid milk products in the marketing area.

(l) "Consumer" means any person to whom fluid milk products are disposed of, except a dealer. The term "consumer" includes, but is not limited to, stores, restaurants, hotels, bakeries, hospitals and other institutions, candy manufacturers, soup manufacturers, livestock farmers, and similar persons who are not necessarily the ultimate users. The term also includes any dealer in his capacity as the operator of any of these establishments, and in connection with any other use or disposition of fluid milk products not directly related to his operations as a dealer.

§ 996.3 *Definitions of plants.* (a) "Plant" means the land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products.

(b) "Receiving plant" means any plant currently used for receiving, weighing or measuring, sampling, and cooling milk received there directly from dairy farmers' farms and for washing and sterilizing the milk cans in which such milk is received, and at which are currently maintained weight sheets or other records of dairy farmers' deliveries.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

(c) "Pool plant" means any receiving plant which, in a given month, meets the conditions and requirements set forth in §§ 996.20, 996.21, and 996.22 for being considered a pool plant in that month.

(d) "Regulated plant" means any pool plant; any pool handler's plant which is located in the marketing area and from which Class I milk is disposed of in the marketing area; any plant operated by a handler in his capacity as a buyer-handler or producer-handler; and any city plant operated by an association of producers.

(e) "City plant" means any plant which is located within 10 miles of the marketing area.

(f) "Country plant" means any plant which is located beyond 10 miles of the marketing area.

§ 996.4 *Definitions of milk and milk products.* (a) "Milk" means the commodity received from a dairy farmer at a plant as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of 1 percent but less than 16 percent, frozen milk, and reconstituted milk.

(b) "Cream" means that portion of milk, containing not less than 16 percent of butterfat, which rises to the surface of milk on standing or is separated from it by centrifugal force, in all forms including sweet, sour, frozen, and aerated cream, and milk and cream mixtures.

(c) "Skim milk" means that fluid product of milk which remains after the removal of cream, and which contains less than one-half of 1 percent of butterfat.

(d) "Fluid milk products" means milk, flavored milk, cream, skim milk, flavored skim milk, cultured skim milk, buttermilk and concentrated milk, either individually or collectively.

(e) "Pool milk" means milk, including milk products derived therefrom, which a handler has received as milk from producers.

(f) "Outside milk" means:

(1) All milk received from dairy farmers for other markets.

(2) All fluid milk products, other than cream, received at a regulated plant from an unregulated plant, up to the total quantity of nonpool milk received at the unregulated plant, except exempt milk, receipts from New York order pool plants which are assigned to Class I pursuant to § 996.27, and receipts from Boston, Lowell-Lawrence, and Worcester regulated plants.

(3) All Class I milk, after subtracting receipts of Class I milk from regulated plants, which is disposed of to consumers in the marketing area from an unregulated plant, except a regulated plant under the Worcester order without its intermediate movement to another plant.

(g) "Concentrated milk" means any unsterilized liquid milk product, other than those products commonly known as evaporated milk and sweetened condensed milk, which is obtained by the evaporation of water from milk, and milk to which any other milk product may be added in the process of manufacture. For purposes of this subpart the weight of the fluid milk products used to produce the concentrated milk shall be used rather than the actual weight of the concentrated milk.

(h) "Exempt milk" means milk which is received at a regulated plant:

(1) In bulk from an unregulated plant, or from the dairy farmer who produced it, for processing and bottling, and for which an equivalent quantity of packaged milk is returned to the dairy farmer or the operator of the unregulated plant, during the same month, or

(2) In packaged form from an unregulated plant in return for an equivalent quantity of bulk milk moved from a regulated plant for processing and bottling during the same month.

MARKET ADMINISTRATOR

§ 996.10 *Designation.* The agency for the administration of this subpart shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 996.11 *Powers.* The market administrator shall have the following powers with respect to this subpart:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations of its terms and provisions; and

(d) To recommend to the Secretary amendments to it.

§ 996.12 *Duties.* The market administrator, in addition to the duties described in other sections of this subpart, shall:

(a) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with sureties thereon satisfactory to the Secretary;

(b) Pay, out of the funds provided by § 996.72, the cost of his bond, his own compensation, and all other expenses necessarily incurred in the maintenance and functioning of his office;

(c) Keep such books and records as will clearly reflect the transactions provided for in this subpart and surrender the same to his successor, or to such other person as the Secretary may designate;

(d) Prepare and disseminate for the benefit of producers, consumers, and handlers, statistics and information concerning the operation of this subpart;

(e) Promptly verify the information contained in the reports submitted by handlers; and

(f) Give each of the producers delivering to a plant as reported by the handler prompt written notice of their actual or potential loss of producer status for the first month in which the plant's status has changed or is changing to that of a nonpool plant.

CLASSIFICATION

§ 996.15 *Classes of utilization.* All milk and milk products received by a handler shall be classified as Class I milk or Class II milk. Subject to §§ 996.16, 996.17 and 996.18, the classes of utilization shall be as follows:

(a) Class I milk shall be all fluid milk products the utilization of which is not established as Class II milk.

(b) Class II milk shall be all fluid milk products the utilization of which is established:

(1) As being sold, distributed, or disposed of other than as or in milk; and other than as or in concentrated milk for fluid consumption, flavored milk or flavored skim milk, buttermilk, or cultured skim milk, for human consumption; and

(2) As plant shrinkage, not in excess of 2 percent of the volume handled.

§ 996.16 *Interplant movements of fluid milk products other than cream.* Fluid milk products, except cream, moved to another plant from a pool plant or from the city plant of an association of producers shall be classified as follows:

(a) If moved to another pool plant, they shall be classified in the class to which they are assigned at the plant of receipt pursuant to §§ 996.25 and 996.26.

(b) If moved to a buyer-handler's plant, they shall be classified as Class I milk, unless Class II utilization is established.

(c) If moved to a producer-handler's plant, or to any unregulated plant, except a plant subject to the New York, Boston, Lowell-Lawrence, or Worcester orders, they shall be classified as Class I milk up to the total quantity of the same form of fluid milk products utilized as Class I milk at the plant to which they were moved.

(d) If moved to a plant subject to the New York, Boston, Lowell-Lawrence, or Worcester orders, they shall be classified in the same class to which the receipt is assigned under such order, except that if moved to a plant subject to the New York order they shall be classified as Class I milk if classified in Classes I–A, I–B, or I–C under the New York order, and shall be classified as Class II milk if classified in any class other than I–A, I–B, or I–C under the New York order.

(e) If moved to a regulated plant of a nonpool handler, except the city plant of an association of producers, or to any unregulated plant except a plant subject to the New York, Boston, Lowell-Lawrence or Worcester orders, they shall be classified as Class I milk if retransferred to either of these types of regulated or unregulated plants.

§ 996.17 *Interplant movements of cream, and of milk products other than fluid milk products.* Cream and milk products other than fluid milk products moved from the regulated plant of a pool handler to another plant shall be classified as Class II milk.

§ 996.18 *Responsibility of handlers in establishing the classification of milk.* (a) In establishing the classification of any milk received by a handler from

producers, the burden rests upon the handler who receives the milk from producers to account for the milk and to prove that such milk should not be classified as Class I milk.

(b) In establishing the classification of any pool milk received in the form of cream or milk products other than fluid milk products, or any nonpool milk or milk products received by a handler, the burden rests upon the receiving handler to account for such milk and milk products and to prove that such milk and milk products should not be classified as Class I milk.

DETERMINATION OF POOL PLANT STATUS

§ 996.20 *Basic requirements for pool plant status.* Each receiving plant shall be a pool plant during each month in which it meets the applicable requirements contained in §§ 996.21 and 996.22, together with the following basic requirements:

(a) A majority of the dairy farmers delivering milk to the plant hold certificates of registration issued pursuant to chapter 94, sections 16C and 16G of the Massachusetts General Laws.

(b) The handler operating the plant holds a license which has been issued by the milk inspector of a city or town in the marketing area, pursuant to chapter 94, section 40, of the Massachusetts General Laws, or a majority of the dairy farmers delivering milk to the plant are approved by such an inspector as sources of supply for milk for sale in his municipality.

(c) The plant is operated neither as the plant of a producer-handler, nor as a pool plant, pursuant to the provisions of the Boston, Lowell-Lawrence, New York, or Worcester orders.

(d) Each of a handler's plants which is a nonpool receiving plant during any of the months of October through February shall not be a pool plant in any of the following months of March through September in which it is operated by the same handler, an affiliate of the handler, or any person who controls or is controlled by the handler, unless its operation during October through February was in the handler's capacity as a producer-handler.

§ 996.21 *Additional requirements for city pool plants.* Each city receiving plant shall be a pool plant in each month in which at least 10 percent of its total receipts of fluid milk products other than cream is disposed of in the marketing area as Class I milk, or in which it is operated by an association of producers. In determining whether a city plant has disposed of the required 10 percent of its receipts as Class I milk in the marketing area, the total quantity of fluid milk products, other than cream, moved from that plant to another city plant which is a regulated plant shall be considered as a disposition of Class I milk in the marketing area up to the quantity of Class I milk disposed of in the marketing area from the other plant.

§ 996.22 *Additional requirements for country pool plants.* (a) Each country receiving plant shall be a pool plant in any month in which more than 30 percent of its total receipts of fluid milk products, other than cream, is disposed of as Class I milk directly to consumers in the marketing area or is shipped as milk to city plants at which more than 50 percent of the total receipts of fluid milk products, other than cream, is disposed of as Class I milk.

(b) Any country plant which is a pool plant continuously in each of the months from October through February shall be a pool plant continuously for the following months of March through September, regardless of the quantity then disposed of in the marketing area, if the handler's written request for pool plant status for such seven months' period is received by the market administrator before March 1 of that year. Changes in the identity of the handler operating the plant shall not affect the application of this paragraph.

ASSIGNMENT OF RECEIPTS TO CLASSES

§ 996.25 *Assignment of pool handlers' receipts to Class I milk.* For the purpose of computing the net quantity of each pool handler's Class I milk for which a value is to be computed pursuant to § 996.50, his receipts of milk and milk products shall be assigned to Class I milk in the following sequence:

(a) Receipts of exempt milk.

(b) Receipts from regulated plants under other Federal orders, which are assigned to Class I milk pursuant to § 996.27.

(c) Receipts of fluid milk products, other than cream and skim milk, from the regulated city plants of other handlers.

(d) Receipts of milk from producers at a handler's country plant equal to the volume of fluid milk products disposed of directly from the country plant as Class I milk outside the marketing area without being received at a city plant.

(e) Receipts of milk directly from producers at the handler's city plant.

(f) Receipts of outside milk at the handler's city plant.

(g) Receipts of fluid milk products, other than cream and skim milk, from the country pool plants of other handlers, in the order of the nearness of the plants to Springfield.

(h) Receipts of milk from producers at the handler's country plants not previously assigned pursuant to paragraph (d) of this section in the order of the nearness of the plants to Springfield.

(i) Receipts of outside milk at the handler's country plants, in the order of the nearness of the plants to Springfield.

(j) Receipts of skim milk from regulated city plants and then from regulated country plants.

(k) All other receipts or available quantities of fluid milk products, from whatever source derived.

§ 996.26 *Assignment of pool handlers' receipts to Class II milk.* Each pool handler's receipts of milk and milk products which are not assigned to Class I milk pursuant to § 996.25 shall be assigned to Class II milk.

§ 996.27 *Receipts from other Federal order plants.* Receipts of fluid milk products from plants regulated by other Federal orders shall be assigned as follows:

(a) Receipts of fluid milk products from regulated plants under the Boston order shall be assigned to the Class in which they are classified under that order.

(b) Receipts of fluid milk products, other than cream, from regulated plants under the Lowell-Lawrence or Worcester orders shall be assigned to Class I milk, unless the operators of the shipping plant and of the receiving plant file a joint written request to the market administrator for assignment to Class II milk of the fluid milk products so received. In such event, the fluid milk products shall be assigned to Class II milk up to the total Class II uses of fluid milk products other than cream at the receiving plant.

(c) Receipts from New York order pool plants shall be assigned to Class I milk if classified in Classes I–A or I–B under the New York order.

REPORTS OF HANDLERS

§ 996.30 *Monthly reports of pool handlers.* On or before the 8th day after the end of each month each pool handler shall, with respect to the milk products received by the handler during the month, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(a) The receipts of milk at each pool plant from producers, including the quantity, if any, received from his own production;

(b) The receipts of fluid milk products at each plant from any other handler assigned to classes pursuant to §§ 996.25 through 996.27.

(c) The receipts of outside milk and exempt milk at each plant; and

(d) The quantities from whatever source derived which were sold, distributed, or used, including sales to other handlers and dealers, classified pursuant to §§ 996.15 through § 996.18.

§ 996.31 *Reports of nonpool handlers.* Each nonpool handler shall file with the market administrator reports relating to his receipts and utilization of fluid milk products. The reports shall be made at the time and in the manner prescribed by the market administrator, except that any handler who receives outside milk during any month shall file the report on or before the 8th day after the end of the month.

§ 996.32 *Reports regarding individual producers.* (a) Within 20 days after a producer moves from one farm to another, or starts or resumes deliveries to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant locations involved. The report shall also state, if known, the plant to which the producer had been delivering prior to starting or resuming deliveries.

(b) Within 15 days after the 5th consecutive day on which a producer has failed to deliver to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the last delivery was made, and the farm and plant locations involved. The report shall also state, if known, the reason for the producer's failure to continue deliveries.

§ 996.33 *Reports of payments to producers.* Each pool handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the month, his producer payroll for such month which shall show for each producer:

(a) The daily and total pounds of milk delivered with the average butterfat test thereof; and

(b) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

§ 996.34 *Maintenance of records.* Each handler shall maintain detailed and summary records showing all receipts, movements, and disposition of milk and milk products during the month, and the quantities of milk and milk products on hand at the end of the month.

§ 996.35 *Verification of reports.* For the purpose of ascertaining the correctness of any report made to the market administrator as required by this subpart or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(a) Verify the information contained in reports submitted in accordance with this subpart;

(b) Weigh, sample, and test milk and milk products; and

(c) Make such examination of records, operations, equipment, and facilities as the market administrator deems necessary for the purpose specified in this section.

§ 996.36 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

MINIMUM CLASS PRICES

§ 996.40 *Class I price at city plants.* The Class I price per hundredweight at city plants shall be determined for each month pursuant to this section. The latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the following computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday, the latest reported figures available on the next succeeding workday shall be used.

(a) Divide by .98 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the year 1926 as the base period.

(b) Divide by 3 the sum of the three latest monthly indexes of department store sales in the Boston Federal Reserve District adjusted for seasonal variations, as reported by the Federal Reserve System, with the years 1935–39 as the base period and divide the result so obtained by 1.26.

(c) Compute an index of grain-labor costs in the Boston milkshed in the following manner:

(1) Compute the simple average of the four latest weekly average retail prices per ton of dairy ration in the Boston milkshed, as reported by the United States Department of Agriculture, divide by 0.5044, and multiply by 0.6.

(2) For each of the States of Maine, Massachusetts, New Hampshire, and Vermont, compute the simple average, on a monthly equivalent basis, of the following farm wage rates reported by the United States Department of Agriculture: The rate per month with board and room; the rate per month with house; the rate per week with board and room; the rate per week without board or room; and the rate per day without board or room. To convert the weekly rates and the daily rates to monthly equivalents, multiply the weekly rates by 4.33 and the daily rate by 26. From the simple averages, compute a combined weighted average monthly rate, using the following weights: Maine, 10; Massachusetts, 6; New Hampshire, 7; and Vermont, 77. Divide the weighted average monthly rate by 0.6394, and multiply the result by 0.4.

(3) Add the results determined pursuant to subparagraphs (1) and (2) of this paragraph.

(d) Divide by 3 the sum of the final results computed pursuant to the preceding paragraphs of this section. Express the result as a whole number by dropping fractions of less than one-half or by raising fractions of one-half or more to the next whole number. The result shall be known as the formula index.

(e) Subject to the succeeding paragraphs of this section the Class I price per hundredweight at city plants shall be as shown in the following table:

CLASS I PRICE SCHEDULE

| Formula index | Class I price per hundredweight | | |
|---|---|---|---|
| | Jan.-Feb.-Mar.-July-Aug.-Sept. | Apr.-May-June | Oct.-Nov.-Dec. |
| 50–56 | $2.21 | $1.77 | $2.65 |
| 57–63 | 2.43 | 1.99 | 2.87 |
| 64–70 | 2.65 | 2.21 | 3.09 |
| 71–77 | 2.87 | 2.43 | 3.31 |
| 78–84 | 3.09 | 2.65 | 3.53 |
| 85–90 | 3.31 | 2.87 | 3.75 |
| 91–97 | 3.53 | 3.09 | 3.97 |
| 98–104 | 3.75 | 3.31 | 4.19 |
| 105–111 | 3.97 | 3.53 | 4.41 |
| 112–118 | 4.19 | 3.75 | 4.63 |
| 119–125 | 4.41 | 3.97 | 4.85 |
| 126–132 | 4.63 | 4.19 | 5.07 |
| 133–139 | 4.85 | 4.41 | 5.29 |
| 140–146 | 5.07 | 4.63 | 5.51 |
| 147–152 | 5.29 | 4.85 | 5.73 |
| 153–159 | 5.51 | 5.07 | 5.95 |
| 160–166 | 5.73 | 5.29 | 6.17 |
| 167–173 | 5.95 | 5.51 | 6.39 |
| 174–180 | 6.17 | 5.73 | 6.61 |
| 181–187 | 6.39 | 5.95 | 6.83 |
| 188–194 | 6.61 | 6.17 | 7.05 |

If the formula index is more than 194 the price shall be increased at the same rate as would result from further extension of this table at the rate of extension in the six highest index brackets.

(f) The Class I price shall be 44 cents more than the price prescribed in paragraph (e) of this section if, under the provisions of the Boston order, less than 33 percent of the milk received by all pool handlers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this paragraph would cause the Class I price to be more than 88 cents above the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent increase as will result in a Class I price equal to the Class I price for the same month of the preceding year plus 88 cents.

(g) The Class I price shall be 44 cents less than the price prescribed in paragraph (e) of this section if, under the provisions of the Boston order, more than 41 percent of the milk received by all pool handlers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this paragraph would cause the Class I price to be more than 88 cents below the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent reduction as will result in a Class I price equal to the Class I price for the same month of the preceding year minus 88 cents.

(h) Notwithstanding the provisions of the preceding paragraphs of this section, the Class I price for any of the months of March through June of each year shall not be higher than the Class I price for the immediately preceding month, and the Class I price for any of the months of September through December of each year shall not be lower than the Class I price for the immediately preceding month.

(i) The Class I price determined under the preceding paragraphs of this section shall be increased or decreased to the extent of any increase or decrease in the rail tariff for the transportation

of milk in carlots in tank cars for mileage distances of 201–210 miles, inclusive, as published in the New England Joint Tariff M No. 6 and supplements thereto or revisions thereof. The adjustment shall be made to the nearest one-half cent per hundredweight, and shall be effective in the first complete month in which such increase or decrease in the rail tariff applies.

§ 996.41 *Class II price at city plants.* The Class II price per hundredweight at city plants shall be determined for each month pursuant to this section.

(a) Divide by 33 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the month, multiply by .98, and multiply the result by 3.7. If the cream price described above is not reported as indicated, an equivalent determined as follows shall be used in lieu of such cream price: Compute the simple average of the differences between the cream prices reported for the latest three months and the monthly averages of the daily prices, using the mid-point of any range as one price, for Grade A (92-score) butter at wholesale in the Chicago market, as reported for the same months by the United States Department of Agriculture, times 1.22, and times 33. Then add to this amount the average of the butter prices described above multiplied by 33 and 1.22 for the current pricing month.

(b) Multiply by 7.85 the simple average of the prices per pound of roller process and spray process nonfat dry milk solids for human consumption; in carlots, f. o. b. Chicago area manufacturing plants, as reported by the United States Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the month during which such milk is delivered.

(c) Add the results obtained in paragraphs (a) and (b) of this section, and from the sum subtract the amount shown below for the applicable month.

| Month: | *Amount (cents)* |
|---|---|
| January and February | 67 |
| March and April | 79 |
| May and June | 85 |
| July | 79 |
| August and September | 73 |
| October, November, and December | 67 |

(d) For each month following the first month for which the amount determined pursuant to this paragraph is greater than 5 cents, the amount to be subtracted pursuant to paragraph (c) of this section shall be reduced by any plus amount determined as follows:

(1) Compute the simple average of the prices reported by the United States Department of Agriculture for milk for manufacturing purposes, f. o. b. plants United States, for each of the 12 months ending with the preceding month, as adjusted to a 3.7 percent butterfat basis by using the butterfat differential applicable pursuant to § 904.63 of the Boston order for the respective months.

(2) Compute the simple average of the Class II prices effective under the provisions of the Boston order in the 201–210 freight mileage zone for the same 12 months.

(3) Determine the amount, adjusted to the nearest one-half cent, by which the average price computed pursuant to subparagraph (1) of this paragraph exceeds the average price computed pursuant to subparagraph (2) of this paragraph.

§ 996.42 *Country plant price differentials.* In the case of receipts at country plants, the prices determined pursuant to §§ 996.40 and 996.41 shall be subject to differentials based upon the zone location of the plant at which the Class I milk or Class II milk was received. The zone location of each plant shall be based on the distance ascertained by the market administrator as the shortest distance from the plant to the City Hall in Springfield, Massachusetts, over highways on which the highway departments of the governing States permit milk tank trucks to move or on the railway mileage distance to Springfield from the nearest railway shipping point for such plant, whichever is shorter. The applicable zone differentials shall be those set forth in the following table, as adjusted pursuant to § 996.43.

DIFFERENTIALS FOR DETERMINATION OF ZONE PRICES

| A Zone (miles) | B Class I price differentials (cents per cwt.) | C Class II price differentials (cents per cwt.) |
|---|---|---|
| Less than 40½ | (1) | (1) |
| 41–50 | −41.5 | −2.0 |
| 51–60 | −42.5 | −3.0 |
| 61–70 | −43.0 | −3.0 |
| 71–80 | −44.5 | −3.0 |
| 81–90 | −45.0 | −3.0 |
| 91–100 | −45.5 | −3.0 |
| 101–110 | −45.5 | −4.5 |
| 111–120 | −47.0 | −4.5 |
| 121–130 | −47.0 | −4.5 |
| 131–140 | −48.0 | −4.5 |
| 141–150 | −50.5 | −4.5 |
| 151–160 | −52.0 | −6.0 |
| 161–170 | −52.0 | −6.0 |
| 171–180 | −54.5 | −6.0 |
| 181–190 | −54.5 | −6.0 |
| 191–200 | −56.0 | −6.0 |
| 201–210 | −56.0 | −7.0 |
| 211–220 | −60.0 | −7.0 |
| 221–230 | −60.5 | −7.0 |
| 231–240 | −61.5 | −7.0 |
| 241–250 | −61.5 | −7.0 |
| 251–260 | −62.5 | −8.0 |
| 261–270 | −63.0 | −8.0 |
| 271–280 | −63.5 | −8.0 |
| 281–290 | −64.5 | −8.0 |
| 291 and over | −65.5 | −8.0 |

[1] No differential.

§ 996.43 *Automatic changes in zone price differentials.* In case the rail tariff for the transportation of milk in 40-quart cans in carlots of 200 or more cans or for the transportation of cream in 40-quart cans in carlots of 100–199 cans, as published in New England Joint Tariff M No. 6 and supplements thereto or revisions thereof, is increased or decreased, the zone price differentials set forth in § 996.42 shall be correspondingly increased or decreased in the manner and to the extent provided in this section. Such adjustments shall be effective beginning with the first complete month in which the changes in rail tariffs apply. If such rail tariff on milk is changed, the differentials set forth in Column B of the table shall be adjusted to the extent of any such change. If such rail tariff on cream is changed, the differentials set forth in Column C of the table shall be adjusted to the extent of any such change divided by 9.05. Adjustments shall be made to the nearest one-half cent per hundredweight.

§ 996.44 *Use of equivalent factors in formulas.* If for any reason a price, index, or wage rate specified by this order for use in computing class prices and for other purposes is not reported or published in the manner described by this order, the market administrator shall use a price, index, or wage rate determined by the Secretary to be equivalent to or comparable with the factor which is specified.

§ 996.45 *Announcement of class prices.* The market administrator shall make public announcements of the class prices as follows:

(a) He shall announce the Class I price for each month on the 25th day of the preceding month, except that if such 25th day is a Sunday or legal holiday he shall announce the Class I price on the next succeeding work day.

(b) He shall announce the Class II price on or before the 5th day after the end of each month.

BLENDED PRICES TO PRODUCERS

§ 996.50 *Computation of net value of milk used by each pool handler.* For each month, the market administrator shall compute the net value of milk which is sold, distributed, or used by each pool handler, in the following manner:

(a) From the handler's total Class I milk, subtract all receipts which have been assigned to Class I milk pursuant to § 996.25 (a), (b), (c), (g), and (j);

(b) From the handler's total Class II milk, subtract all receipts which have been assigned to Class II milk pursuant to § 996.26, except receipts of milk from producers;

(c) Multiply the remaining quantities of Class I milk and Class II milk by the prices applicable pursuant to §§ 996.40, 996.41 and 996.42.

(d) Add together the resulting value of each class;

(e) Add the total amount of the payment required from the pool handler pursuant to § 996.66; and

(f) Subtract the value obtained by multiplying the quantities assigned to Class I milk pursuant to § 996.25 (f), (i), and (k) by the price applicable pursuant to §§ 996.41 and 996.42.

§ 996.51 *Computation of the basic blended price.* The market administrator shall compute the basic blended price per hundredweight of milk delivered during each month in the following manner:

(a) Combine into one total the respective net values of milk, computed pursuant to § 996.50 and payments required pursuant to §§ 996.65 and 996.66, for each handler from whom the market administrator has received at his office, prior to the 11th day after the end of such month, the report for such month and the payments required pursuant to §§ 996.61 (b) and 996.65 and 996.66, for milk received during each month since the effective date of the most recent amendment to this subpart;

(b) Add the amount of unreserved cash on hand at the close of business on the 10th day after the end of the month from payments made to the market administrator by handlers pursuant to §§ 996.61, 996.62, 996.65, 996.66 and 996.67;

(c) Deduct the amount of the plus differentials, and add the amount of the minus differentials, which are applicable pursuant to § 996.64;

(d) Divide by the total quantity of producer milk for which a value is determined pursuant to paragraph (a) of this section; and

(e) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments set forth in §§ 996.61 and 996.62. This result, which is the minimum blended price for milk containing 3.7 percent butterfat received from producers at city plants shall be known as the basic blended price.

§ 996.52 *Announcement of blended prices.* On the 12th day after the end of each month the market administrator shall mail to all pool handlers and shall publicly announce:

(a) Such of these computations as do not disclose information confidential pursuant to the act;

(b) The zone blended prices per hundredweight resulting from adjustment of the basic blended price by the country plant price differentials pursuant to § 996.64; and

(c) The names of the pool handlers, designating those whose milk is not included in the computations because of failure to make reports or payments pursuant to this subpart.

PAYMENTS FOR MILK

§ 996.60 *Advance payments.* On or before the 10th day after the end of each month, each pool handler shall make payment to producers for the approximate value of milk received during the first 15 days of such month. In no event shall such advance payment be at a rate less than the Class II price for such month. The provisions of this section shall not apply to any handler who, on or before the 17th day after the end of the month, makes final payment as required by § 996.61 (a).

§ 996.61 *Final payments.* Each pool handler shall make payment for the total value of milk received during such month as required to be computed pursuant to § 996.50 as follows:

(a) On or before the 25th day after the end of each month to each producer at not less than the basic blended price per hundredweight, subject to the differentials provided in §§ 996.63 and 996.64, for the quantity of milk delivered by such producer; and

(b) To producers, through the market administrator, by paying to, on or before the 23d day after the end of each month, or receiving from the market administrator, on or before the 25th day after the end of each month, as the case may be, the amount by which the payments at the basic blended price adjusted by the plant and farm location differentials provided in § 996.64 are less than or exceed the value of milk as required to be computed for each such handler pursuant to § 996.50, as shown in a statement rendered by the market administrator on or before the 20th day after the end of such month.

§ 996.62 *Adjustments of errors in payments.* Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments pursuant to §§ 996.61 (b), 996.65 or 996.66 the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is payable by the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment to any producer for milk delivered to any handler discloses payment to such producer of an amount less than is required by § 996.61 (a), the handler shall make up such payment to the producer not later than the time of making final payment for the month in which such error is disclosed.

§ 996.63 *Butterfat differential.* Each handler shall, in making payments to each producer for milk received from him, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator as follows:

Divide by 33 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the period between the 16th day of the preceding month and the 15th day inclusive of the month during which such milk is delivered, subtract 1.5 cents, and divide the result by 10.

If the cream price described above is not reported as indicated an equivalent determined as follows shall be used in lieu of such cream price: Compute the simple average of the differences between the cream prices reported for the latest three months and the monthly averages of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the Chicago market, as reported for the same months by the United States Department of Agriculture, times 1.22 and times 33. Then add to this amount the average of the butter prices described above, for the period between the 16th day of the preceding month and the 15th day inclusive of the month during which such milk is delivered, multiplied by 33 and 1.22.

§ 996.64 *Location differentials.* The payments to be made to producers by handlers pursuant to § 996.61 (a) shall be subject to the Class I price differentials applicable pursuant to § 996.42, and to further differentials as follows:

(a With respect to milk delivered by a producer whose farm is located in any of the following cities or towns, there shall be added 23 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to §§ 996.40 and 996.42 which is effective at the plant to which such milk is delivered in which event there shall be added an amount which will give as a result such price: Massachusetts: Becket, Florida, Hinsdale, Otis, Peru, Sandisfield, Savoy, Washington, and Windsor. New Hampshire: Chesterfield, and Westmoreland. Vermont: Brattleboro, Dover, Dummarston, Marlboro, Newfane, Putney, and Wilmington.

(b) With respect to milk delivered by a producer whose farm is located in Franklin, Hampshire, Hampden, or Worcester Counties in Massachusetts or in any of the following cities or towns, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to §§ 996.40 and 996.42 which is effective at the plant to which such milk is delivered, in which event there shall be added an amount which will give as a result such price: Connecticut: Ellington, Enfield, Granby, Somers, and Suffield. New Hampshire: Hinsdale and Winchester. Vermont: Guilford, Halifax, Readsboro, Vernon, and Whitingham.

§ 996.65 *Payments on outside milk.* Within 23 days after the end of each month handlers shall make payments to producers, through the market administrator, as follows:

(a) Each buyer-handler or producer-handler whose receipts of outside milk are in excess of his total use of Class II milk after deducting receipts of cream, shall make payment on such excess quantity at the difference between the Class I and Class II prices pursuant to §§ 996.40, 996.41, and 996.42 effective for the location or freight mileage zone of the plant at which the handler received the outside milk.

(b) Each handler who operates an unregulated plant from which outside milk is disposed of to consumers in the marketing area without intermediate movement to another plant shall make payment on the quantity so disposed of. The payment shall be at the difference between the Class I and Class II prices pursuant to §§ 996.40, 996.41, and 996.42, effective for the location or freight mileage zone of the handler's plant.

§ 996.66 *Payments on Class I receipts from other Federal order plants.* Within 23 days after the end of each month, each pool handler, buyer-handler, or producer-handler who received Class I milk from a New York, Boston, Lowell-Lawrence, or Worcester order regulated plant during the month shall make such payment to producers, through the market administrator, as results from the following computation:

(a) Adjust the price pursuant to §§ 996.40 and 996.42 effective for the location or freight mileage zone of the plant from which the Class I milk was received by the butterfat differential calculated pursuant to § 996.63.

(b) Adjust the zone Class I price applicable under the other Federal order (Class I–A or I–B in the case of a New York order plant) by the butterfat differential applicable under that order.

(c) If the adjusted Class I price calculated under paragraph (a) of this section exceeds the corresponding price calculated under paragraph (b) of this section, multiply the quantity of Class I receipts from the other Federal order plant by the difference in price.

§ 996.67 *Adjustment of overdue accounts.* Any balance due pursuant to §§ 996.61, 996.62, 996.65, and 996.66 to or from the market administrator on the 10th day of any month, for which remittance has not been received in, or paid from, his office by the close of business on that day, shall be increased one-half of 1 percent, effective the 11th day of such month.

§ 996.68 *Statements to producers.* In making the payments to producers prescribed by § 996.61 (a), each pool handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(a) The month and the identity of the handler and of the producer;

(b) The total pounds and average butterfat test of milk delivered by the producer;

(c) The minimum rate or rates at which payment to the producer is required under the provisions of § 996.61 (a).

(d) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(e) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under §§ 996.70 and 996.71, together with a description of the respective deductions; and

(f) The net amount of payment to the producer.

MARKETING SERVICES

§ 996.70 *Marketing service deduction; nonmembers of an association of producers.* In making payments to producers pursuant to § 996.61 (a) each handler shall, with respect to all milk delivered by each producer other than himself during each month, except as set forth in § 996.71, deduct 3 cents per hundredweight, or such lesser amount as the market administrator shall determine to be sufficient, and shall on or before the 25th day after the end of each month, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator only in providing for market information to, and for verification of weights, samples, and tests of milk delivered by, such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk delivered by, such producers.

§ 996.71 *Marketing service deduction; members of an association of producers.* In the case of producers who are members of an association of producers which is actually performing the services set forth in § 996.70, each handler shall, in lieu of the deductions specified in § 996.70, make such deductions from payments made pursuant to § 996.61 (a) as may be authorized by such producers and pay, on or before the 25th day after the end of each month, such deduction to such associations.

ADMINISTRATION EXPENSE

§ 996.72 *Expense of administration.* Within 23 days after the end of each month, each handler shall make payment to the market administrator of his pro rata share of the expense of administration of this order, based on the handler's receipts of fluid milk products, other than cream, during the month. The payment shall be at the rate of 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, on the handler's receipts of milk from producers, including receipts from his own production, receipts of exempt milk, processed at a regulated plant, and his receipts of outside milk, except receipts of outside milk from other Federal order plants; and at the rate by which the rate applicable to milk received from producers exceeds the rate of assessment applicable under the other Federal order, on his receipts from other Federal order plants.

OBLIGATIONS

§ 996.73 *Termination of obligations.* The provisions of this section shall apply to any obligation under this order for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this order, to make available to the market administrator or his representatives all books or records required by this order to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this order shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 996.80 *Effective time.* The provisions of this subpart, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 996.81.

§ 996.81 *Suspension or termination.* The Secretary may suspend or terminate this subpart or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This subpart shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 996.82 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this subpart, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 996.83 *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions of this subpart, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this subpart, over and above the amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 996.84 *Agents.* The Secretary may, by designation in writing, name any of-

ficer or employee of the United States to act as his agent or representative in connection with any of the provisions of this subpart.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

[F. R. Doc. 51-11126; Filed, Sept. 14, 1951; 8:49 a. m.]

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## [ 7 CFR Part 999 ]

[Docket No. AO-204-A2]

### HANDLING OF MILK IN WORCESTER, MASS., MARKETING AREA

### DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED ORDER AMENDING ORDER NOW IN EFFECT

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Worcester, Massachusetts on April 10, 1951, pursuant to notice thereof which was issued on March 14, 1951 (16 F. R. 2527) upon proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Worcester, Massachusetts marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Administrator, Production and Marketing Administration, on July 13, 1951, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision and opportunity to file written exceptions thereto which was published in the FEDERAL REGISTER on July 20, 1951 (16 F. R. 7060; F. R. Doc. 51-8322).

*Rulings.* Within the period reserved for exceptions, interested parties filed exceptions to certain of the findings, conclusions and actions recommended by the Assistant Administrator. In arriving at the findings, conclusions, and regulatory provisions of this decision, each of such exceptions was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings, conclusions, and actions decided upon herein are at variance with the exceptions, such exceptions are overruled.

The material issues entered on the record of the hearing were whether:

(1) The marketing area should be extended or reduced.

(2) The definition for outside milk should be revised.

(3) The language of the order should be revised to provide for the same treatment of Lowell-Lawrence pool milk as is accorded Springfield pool milk received at a Worcester regulated plant.

(4) The provisions dealing with pool plant qualifications should be revised.

(5) The assignment provisions should be revised to provide for the assignment of out-of-area Class I sales made from a handler's country plant to receipts of producer milk at such plant, to change the assignment sequence with reference to receipts on skim milk and to provide an assignment for milk not otherwise covered.

(6) Any changes made in the basis of determining the Class II price and the butterfat differential under the Boston order should be incorporated in the Worcester order.

(7) Required payments on outside milk should be eliminated under certain circumstances.

(8) A method for computing a composite wage index for use in the Class I formula should be provided.

(9) The operator of a milk plant should be made the responsible handler with respect to payment, reporting, and other obligations imposed by the order for all milk and milk products received at such plant.

(10) Producer milk under the Boston, Lowell-Lawrence, or Springfield orders diverted to a Worcester pool plant should be excluded as producer milk under the Worcester order.

(11) The definition of buyer-handler should be amended to require the disposition of more than 10 percent of such a handler's total receipts of fluid milk products other than cream as Class I milk in the marketing area.

(12) The requirement that milk moved by buyer-handlers to other plants be classified as Class I should be revised.

(13) There should be excluded from the current pool computation milk of any nonpool handler in noncompliance with reference to the payment or reporting provisions.

(14) Credits should be granted a handler for payments made to the Boston pool in the computation of such handler's pool obligation.

(15) Certain other nonsubstantive changes should be made to delete obsolete language and to make the language of the Worcester order consistent with that of other market orders.

*Findings and conclusions.* From the evidence introduced at the hearing and the record thereof with respect to the aforementioned issues it is hereby found and concluded that:

(1) The present limits of the marketing area should be revised to exclude the town of Northbridge, Massachusetts. The area as presently defined includes fourteen Massachusetts cities and towns which, except for the town of Northbridge, form a compact, concentrated distribution area served primarily by handlers who do the main portion of their business in the city of Worcester.

The town of Northbridge is primarily served by local producer-handlers doing the bulk of their business in a very small area. Historically there has been a very close association between local distributors and producers in the towns of Northbridge and Uxbridge which is not a part of the marketing area. Prior to the adoption of the Worcester order these local distributors customarily solved their supply and demand problems among themselves. The inclusion of Northbridge in the marketing area has served to disrupt these local relationships of long standing. Northbridge producer-distributors are no longer in a position to call on their neighbors in Uxbridge for supplemental supplies as needed unless they make the equalization payment as required on all outside milk disposed of as Class I. Accordingly, Uxbridge producer-dealers have lost their customary outlet for excess milk.

The present limits of the marketing area were established on the basis of information presented on the record of the promulgation hearing which information purported to show that Worcester handlers did a substantial business in the town of Northbridge. It now appears that certain Worcester handlers do have routes extending into Northbridge, but their distribution in the town represents only a very small portion of their total fluid distribution and only a minor part of the total fluid distribution of all handlers in Northbridge. Exclusion of the town as a part of the marketing area will not change the status of a single Worcester pool handler and accordingly will have little, if any, effect on producers delivering to such handlers.

The record fails to support the extension of the marketing area to include the towns of Marlboro and Northboro, Massachusetts.

(2) The proposal to include as outside milk all receipts from New York order pool plants which are classified as other than I-A or I-B under the New York order should be adopted. Under the present provisions of the order receipts from New York order pool plants are specifically excluded from the outside milk definition and it is therefore possible for Worcester handlers to utilize New York Class I-C or Class III milk without being subject to the equalization payment on milk. The order presently prevents the replacement of local producer milk by New York Class I-C or Class III milk in the plant of a Worcester pool handler since it is specifically provided that such receipts shall be assigned to Class II. However, milk moving from a New York order pool plant to the nonpool plant of a Worcester producer-handler or a buyer-handler, located outside of the marketing area would be Class I-C under the New York order and would not be subject to the equalization payment to the Worcester pool. In order to maintain a Class I price on all milk disposed of in Worcester, New York milk classified as other than I-A or I-B under the New York order should be considered outside milk.

The outside milk definition should further be revised to except receipts from producer-handlers and buyer-handlers under the Boston, Lowell-Lawrence and Springfield orders. Such receipts, except the own farm production of producer-handlers, are now considered outside milk. Under the assignment provision receipts of outside milk are assigned after receipts from New York, Boston, and Worcester pool handlers, receipts from other Worcester handlers' and direct producer receipts. Accordingly, buyer-handlers and producer-handlers from other New England Federal markets are at a disadvantage, as compared to pool handlers in such markets, in furnishing milk to Springfield handlers.

(3) The present order provisions should be revised to provide the same treatment for milk moved from Lowell-

Lawrence pool plants as is accorded milk moved from Springfield pool plants to a Worcester regulated plant. With a marketwide pool in Lowell-Lawrence the incentive to transfer excess milk from Lowell-Lawrence to Worcester has been reduced.

The Lowell-Lawrence order provides that receipts of fluid milk products, other than cream, from regulated plants under the Springfield and Worcester orders be assigned to Class I unless Class II is agreed upon in writing to the market administrator and an equivalent disposition in Class II actually occurred at the receiving plant. The same type of reciprocal arrangement should be provided in the Worcester order so that the treatment of milk under the three secondary markets is consistent.

(4) The provisions dealing with qualifications for pool plants should be amended to specifically exclude from pool plant status during the months of March through September any of a handler's plants which were nonpool receiving plants during any of the preceding months of October through February. Under the present order provisions it is possible that a handler's city plant located outside of the marketing area could be a nonpool plant during the months of October through February and then because of increased Class I disposition from such plant within the marketing area during the months of March through September qualify as a pool plant during such months. At the same time dairy farmers delivering to such plant would not qualify as producers since they would have delivered to a nonpool plant during the October–February period. Under such circumstances the handler would be under substantial obligation to the pool since he would be charged the use value of all of the milk in his plant and credited with payment for such milk at the Class II price. Such a situation could raise complications in the administration of the order and result in serious financial loss to the handler involved. As an unregulated plant the pool obligation would be limited to payment of the difference between the Class I and Class II price on only that volume of milk disposed of as Class I milk direct to consumers within the marketing area. The adoption of the proposed language protects unregulated dealers from unreasonable obligation to the pool while at the same time assuring producers reasonable protection from sales of unregulated milk and provides uniform treatment of such milk under both the Springfield and Lowell-Lawrence orders.

The proposal to amend the country pool plant qualification provisions to lower the percentage of total milk receipts required to be disposed of in the marketing area should not be adopted. The order presently provides that a country plant dispose of 50 percent of its total receipts of fluid milk products, other than cream, as Class I milk directly to consumers in the marketing area, or as milk to city plants under the Springfield or Worcester orders at which more than 50 percent of the total receipts of fluid milk products, other than cream, is disposed of as Class I milk. It was proposed that the shipping requirement be lowered from 50 percent to 30 percent. At the present time there is no country plant which relies on shipments to both Springfield and Worcester to qualify as a Worcester pool plant. Therefore, the opportunity to use shipments to Springfield to meet the qualifying percentage has little significance and should be deleted. There is no evidence that plants now acting or needed as reserve plants for the Worcester market cannot qualify under the present shipping requirement.

(5) The present assignment provisions of the order should be amended to provide for the assignment of out of area Class I sales made from a handler's country plant to receipts of producer milk at such plant and the sequence of assignment should be revised in other respects. Under the present order provisions a handler's Class I sales are assigned to producer receipts at his city plant ahead of the assignment of receipts at his country plant. It is possible under this procedure that a handler operating both a country and a city plant may have a portion of his milk disposed of from his country plant as out of area Class I sales charged to him at the country plant price and the balance of such sales charged at the city plant price. This situation would arise only when the volume of milk at the city plant exceeds the Class I demand for such milk. At such time the balance of the city plant supply, in excess of Class I requirements, plus the volume of producer receipts held at the country plant ordinarily would be utilized as Class II unless an out of area Class I market is found for such milk. The assignment of such sales from the country plant to receipts at such plant maintains the relationship between milk prices at the two plants as established by the order since the difference in price is based on the cost of movement to Worcester.

The present allocation provisions should be revised to provide for the assignment to Class I utilization of receipts of skim milk from all regulated plants after receipts of producer milk and outside milk at a handler's plant. Under the present assignment procedure receipts of skim milk from the regulated city plants of other handlers take precedence over producer receipts, receipts of outside milk, and receipts of milk from the country pool plants of other handlers. This assignment sequence creates confusion between handlers in the pricing of skim milk and necessitates numerous price adjustments, since skim milk is a Class II product and is usually transferred for Class II use. Changing this sequence in no way affects the total value of the pool but merely transfers the Class I accounting in the pool from one city plant handler to another.

It is possible that a handler may have milk in his plant from sources other than those specifically referred to in the present assignment provisions. This might take the form of unidentified milk, reconstituted milk, or milk in inventory. The inclusion of a catch-all assignment provision should be adopted to assure the assignment of all milk and milk products in the handler's plant.

The assignment of fluid milk products, other than cream, received from a Springfield pool plant should be allowed on an agreement basis between the Worcester and Springfield handlers without regard to outside milk receipts. The present provisions provide that assignment by agreement to Class II be limited to that remaining Class II utilization in the Worcester handler's plant after deduction of its receipts of outside milk. Permitting the assignment as Class II, up to the total volume of Class II use in the Worcester plant, will allow the two handlers involved to determine by agreement which producers will get credit for the Class I sales and will not affect the over-all costs of the milk involved. Since producers supplying both markets are located in the same general supply area, the producers are in position to shift from one market to the other if handlers were to agree upon a utilization which would maintain one market price to producers substantially higher than the other.

(6) The proposal to make such changes in the Class II pricing provisions as are necessary to maintain the present relationship to the Boston Class II price should be adopted. The present basis of Class II pricing was established so that the Worcester Class II price would move with the price of milk for similar use in the Boston market. For the same reasons that the present relationship was established, it is essential that any changes made in the Boston Class II pricing be reflected in the Worcester Class II pricing. Similarly, the method of determining the butterfat differential in the Worcester market has been the same as that used in other Federal orders effective in the New England region. Accordingly, in the computation of the butterfat differential the weight of a can of 40 percent cream should be considered 33 pounds, rather than the 33.48 pounds presently used.

Certain producer interests proposed that in the computation of the butterfat differential the 1.5 cents factor be deleted. They contend that the factor represents a freight adjustment and since in the Worcester market the bulk of the milk is received at the city plants, no allowance is justified. The evidence in the record on this point is not conclusive. Accordingly, no further change can be considered on the basis of this record.

(7) No change should be made in the present order provisions with reference to the equalization payments required on outside milk. Proponents asked that the order be amended to provide that the outside milk payment be invalidated during any period in which an emergency is declared under the Boston order. In this connection it does not necessarily follow that an emergency will exist in the secondary markets at any time that there is an emergency in the Boston market. If a provision of the nature proposed were desirable, it should take the form of an independent determination with specific reference to the Worcester market.

(8) The order should provide for the computation of a composite wage rate index which would be similar to the farm-wage rate index which has been

utilized in the calculation of the Class I formula price since the adoption of that formula April 1, 1948. The United States Department of Agriculture is no longer collecting information from which the monthly composite wage rates were computed and that series has been discontinued. Therefore, it is necessary to compute an equivalent composite farm wage rate. Farm wage rates are recorded quarterly by the United States Department of Agriculture as rates per month with board and room, per month with house, per week with board and room, per week without room or board, and per day without board or room. These rates should be expressed as a simple average monthly composite rate by converting the weekly rates to a monthly equivalent by multiplying by 4.33 weeks and by converting the daily rate to a monthly basis by using 26 working days per month. The simple average monthly composite farm wage rates for each of the four states used in the Class I formula should be combined according to the rate expressed in the order. In order to express the rate as an index on the same basis as that used in converting the previously published monthly composite farm wage rate to an index number for computation of the formula price, it is necessary to divide the milkshed average composite wage rate figure by .6394. This factor is determined from the average relationship of the milkshed average wage rate figure derived from the currently published data to the series which was previously published and used in the computation of the formula price.

(9) The proposal to amend the order to provide that the operator of a milk plant be the responsible handler with respect to payment, reporting, and other obligations under the order for all milk and milk products received at such plant should be adopted. The operator of a plant is the only person who can reasonably be held responsible for the weighing and testing of producers' milk. He has control of the receiving function and logically should be responsible for maintaining proper records of such receipts and for proving the utilization thereof. Since payments to producers are made on the basis of weights and tests of the receiving plant, as verified by the market administrator, the operator of such plant should be held responsible for paying producers and for other obligations imposed by the order upon a handler. Milk temporarily diverted from the pool plant of a handler for the account of such handler should be considered as having been received at the pool plant since producers of such milk would ordinarily be regular suppliers of the market and as such should be assured the market blend price for their milk. However, in accounting for such milk the records of the handler actually receiving the milk would be relied upon to prove receipts and tests even though the handler who diverted such milk to a nonpool plant would be responsible for making such records available.

It was proposed that bulk milk of dairy farmers which is received at a pool plant for processing and for which an equivalent volume of milk is returned to the dairy farmer be considered exempt milk. There was no objection to the exemption of such milk from the market pool. The number of persons and the quantity of milk involved in this type of transaction is small and apparently does not adversely affect the stability of the market. It is concluded, therefore, that such milk of a dairy farmer which is delivered to a pool handler for processing and for which an equivalent volume of bottled milk is returned should be considered exempt milk and not included in the pool. In cases where the volume of milk received from a dairy farmer is in excess of the volume of bottled milk returned, such excess milk disposed of to the pool handler should be considered as producer milk.

Under the present order provisions a handler under certain conditions is permitted to process and bottle milk for another handler without regarding such milk as outside milk or involving the other handler in the market pool because of the processing transaction. This principle should be continued as it applies to handlers or dealers who operate plant facilities and actually receive at such plant the milk which is transferred to the plant of a handler for processing and bottling and for which an equivalent volume of milk is actually returned.

The verification of the receipts and disposition necessary to substantiate the exempt status of such milk involve the same type of audit of handlers' records as in the case of producer milk, and it is therefore concluded that such milk should be subject to the administration assessment and bear its proportionate share of administrative costs.

(10) The proposal to amend the producer definition to provide that a dairy farmer who is a producer under the Boston, Lowell-Lawrence, or Springfield orders shall not be a producer under the Worcester order with regard to any of his Boston, Lowell-Lawrence, or Springfield pool milk diverted to a Worcester pool plant should be adopted. Under the present order provisions such diversions could result in a dairy farmer being considered a producer both at the plant from which his milk is diverted and at the Worcester pool plant. Such a situation could involve unreasonable financial costs to the handler if he were required to pool the milk under both pools. The adoption of the proposal will facilitate the disposition of surplus milk by enabling more efficient handling in movements between markets and at the same time provide Worcester producers the same protection they enjoy under the present order provisions.

(11) The proposal to amend the definition of a buyer-handler to require the disposition of more than 10 percent of the total receipts of fluid milk products, other than cream, as Class I milk in the marketing area should be adopted. Handlers who have only a casual association with the market, that is do less than 10 percent of their Class I business in the marketing area, should not acquire buyer-handler status. A buyer-handler, as a regulated handler, must have sufficient pool milk to cover all of his Class I sales, both within and without the marketing area, or pay the outside milk payment on whatever Class I utilization is in excess of his supply of pool milk. An unregulated handler, on the other hand, need have pool milk to cover, or pay the outside milk payment on, only that volume of Class I milk disposed of within the marketing area.

Under this provision all sales by a pool handler to an individual doing less than 10 percent of his Class I business in the area will be Class I up to the extent of such use by such unregulated handler.

The order presently provides that any city plant meeting the basic qualifications for pooling shall be a pool plant in only those months in which at least 10 percent of its total receipts of fluid milk products, other than cream, is disposed of as Class I milk in the marketing area. Since different treatment is prescribed for pool and nonpool handlers, it is essential that a handler be in a position to determine readily his status as a pool handler. In this connection the final classification of milk transferred between handlers is dependent on the actual utilization and source of all receipts in the transferee plant. Accordingly, in order to simplify the determination of a handler's pool status it should be provided that for such purpose the transfers of fluid milk products, other than cream, to a regulated city plant be considered as a disposition of Class I milk in the marketing area up to the quantity of Class I milk disposed of in the marketing area from such other plant.

(12) The proposal to revise the present order provisions which provide that milk moved by buyer-handlers to other plants be classified as Class I should not be adopted. Buyer-handlers get no milk direct from producers but purchase all of their requirements for fluid products from other handlers. Accordingly, they are in a position to maintain a day-to-day balance between their requirements and procurement. The present order provisions do not limit purchases for Class II use in the buyer-handler's plant but merely require that any transfer of milk to a third plant be Class I. Class II milk is defined and priced for the purpose of removing necessary excesses from the market. It appears that buyer-handlers do not need to purchase Class II milk in excess of their own use. To encourage a buyer-handler to buy long and permit free transfer to nonpool plants for Class II use could adversely affect producers by resulting in a lower classification for such milk than might otherwise be available through other outlets.

(13) The proposal to exclude from each current pool computation milk of any nonpool handler who is not in compliance with the reporting and payment provisions for any prior month should be adopted. The order presently has such a provision with reference to a pool handler in noncompliance. However, under the present order provision a nonpool handler in violation, because of nonreporting or nonpayment of assessments due, continues to be carried in the current pool computations. Under such arrangement it is possible that such indebtedness to the pool could actually reach the point of threatening the sol-

vency of the pool. Exclusion of the milk of such nonpool handlers from the current pool computation assures the solvency of the settlement fund and at the same time does not relieve such nonpool handler of any of his obligations or responsibilities under the order.

(14) The proposal to amend the provisions dealing with the computation of the value of milk utilized by a handler to credit any amount that such handler is required to pay to the Boston pool for milk disposed of in the Boston marketing area should not be adopted. This proposal was made on the premise that the Boston marketing area would be expanded to include specified military installations. Since the proposed expansion of the Boston marketing area has not been recommended this proposal should not be considered further.

(15) The other proposals considered at the hearing involve nonsubstantive changes which would merely delete obsolete language or clarify the language of the present provisions. There was no opposition testimony and it is accordingly concluded that they should be adopted.

*General findings.* (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, will regulate the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in the proposed marketing agreement upon which a hearing has been held; and

(c) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to section 2 and section 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, are such as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

*Marketing agreement and order.* Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Worcester, Massachusetts, Marketing Area," and "Order Amending the Order, as amended, Regulating the Handling of Milk in the Worcester, Massachusetts, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

*Order Directing the Conduct of a Referendum, Determination of Representative Period, and Designation of Referendum Agent*

Pursuant to section 8c (19) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 608c (19)), it is hereby directed that a referendum be conducted among producers (as defined in the order, as amended, and as hereby proposed to be further amended, regulating the handling of milk in the Worcester, Massachusetts marketing area) who, during the month of June 1951 were engaged in the production of milk for sale in the marketing area specified in the aforesaid order, as amended, and as hereby proposed to be further amended, to determine whether such producers favor the issuance of the order, as amended, which is a part of this decision of the Secretary of Agriculture.

The month of June 1951 is hereby determined to be the representative period for the conduct of such referendum.

Richard D. Aplin is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 20th day from the date this decision is issued.

*It is hereby ordered*, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as amended, and as hereby proposed to be further amended by the attached order which will be published with this decision.

This decision filed at Washington, D. C., this 11th day of September 1951.

[SEAL] CHARLES F. BRANNAN,
*Secretary of Agriculture.*

*Order*[1] *Amending the Order, as Amended, Regulating the Handling of Milk in the Worcester, Massachusetts Marketing Area*

§ 999.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed amendment to the order, as amended, regulating the handling of milk in the Worcester, Massachusetts, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk produced for sale in the said marketing area, as determined pursuant to section 2 of the act, are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

*Order relative to handling.* It is therefore ordered that on and after the effective date hereof, the handling of milk in the Worcester, Massachusetts, marketing area shall be in conformity to and in compliance with the following terms and conditions:

DEFINITIONS

§ 999.1 *General definitions.* (a) "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

(b) "Worcester, Massachusetts, marketing area", also referred to as the "marketing area", means the territory included within the boundary lines of the following Massachusetts cities and towns: Auburn, Boylston, Clinton, Grafton, Holden, Leicester, Millbury, Paxton, Rutland, Shrewsbury, Spencer, West Boylston, Worcester.

(c) "Order", used with the name of a marketing area other than the Worcester, Massachusetts, marketing area, means the order issued by the Secretary regulating the handling of milk in the other marketing area.

(d) "Month" means a calendar month.

§ 999.2 *Definitions of persons.* (a) "Person" means any individual, partnership, corporation, association, or any other business unit.

(b) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers and perform the duties of the Secretary of Agriculture.

(c) "Dairy farmer" means any person who delivers bulk milk of his own production to a plant.

(d) "Dairy farmer for other markets" means any dairy farmer whose milk is received by a handler at a pool plant during the months of March through September from a farm from which the handler, an affiliate of the handler, or any person who controls or is controlled by the handler, received nonpool milk on more than 3 days in any one of the

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders, have been met.

preceding months of October through February, except that the term shall not include any person who was a producer-handler during any of the preceding months of October through February.

(e) "Producer" means any dairy farmer whose milk is delivered from his farm to a pool plant, except a dairy farmer for other markets and a dairy farmer with respect to exempt milk delivered. The term shall also include a dairy farmer with respect to his operation of a farm from which milk is ordinarily delivered to a handler's pool plant, but whose milk is diverted to another plant, if the handler, in filing his monthly report pursuant to § 999.30, reports the milk as receipts from a producer at such pool plant and as moved to the other plant.

The term shall not apply to a dairy farmer who is a producer under the Boston, Lowell-Lawrence, or Springfield orders, with respect to milk diverted from the plant subject to the other order to which the dairy farmer ordinarily delivers.

(f) "Association of producers" means any cooperative marketing association which the Secretary determines to be qualified pursuant to the provisions of the act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and to be engaged in making collective sales or marketing of milk or its products for the producers thereof.

(g) "Handler" means any person who, in a given month, operates a pool plant, or any other plant from which fluid milk products are disposed of, directly or indirectly, in the marketing area.

(h) "Pool handler" means any handler who operates a pool plant.

(i) "Producer-handler" means any person who is both a handler and a dairy farmer, and who receives no milk other than exempt milk from other dairy farmers except producer-handlers.

(j) "Buyer-handler" means any handler who operates a bottling or processing plant from which more than 10 percent of his total receipts of fluid milk products, other than cream, are disposed of by him as Class I milk in the marketing area, and whose entire supply of fluid milk products is received from other handlers.

(k) "Dealer" means any person who operates a plant at which he engages in the business of distributing fluid milk products, or manufacturing milk products, whether or not he disposes of any fluid milk products in the marketing area.

(l) "Consumer" means any person to whom fluid milk products are disposed of, except a dealer. The term "consumer" includes, but is not limited to, stores, restaurants, hotels, bakeries, hospitals and other institutions, candy manufacturers, soup manufacturers, livestock farmers, and similar persons who are not necessarily the ultimate users. The term also includes any dealer in his capacity as the operator of any of these establishments, and in connection with any other use or disposition of fluid milk products not directly related to his operations as a dealer.

§ 999.3 *Definitions of plants* (a) "Plant" means the land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products.

(b) "Receiving plant" means any plant currently used for receiving, weighing or measuring, sampling, and cooling milk received there directly from dairy farmers' farms and for washing and sterilizing the milk cans in which such milk is received, and at which are currently maintained weight sheets or other records of dairy farmers' deliveries.

(c) "Pool plant" means any receiving plant which, in a given month, meets the conditions and requirements set forth in §§ 999.20, 999.21, and 999.22 for being considered a pool plant in that month.

(d) "Regulated plant" means any pool plant; any pool handler's plant which is located in the marketing area and from which Class I milk is disposed of in the marketing area; any plant operated by a handler in his capacity as a buyer-handler or producer-handler; and any city plant operated by an association of producers.

(e) "City plant" means any plant which is located within 10 miles of the marketing area.

(f) "Country plant" means any plant which is located beyond 10 miles of the marketing area.

§ 999.4 *Definitions of milk and milk products.* (a) "Milk" means the commodity received from a dairy farmer at a plant as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of 1 percent but less than 16 percent, frozen milk, and reconstituted milk.

(b) "Cream" means that portion of milk, containing not less than 16 percent of butterfat, which rises to the surface of milk on standing or is separated from it by centrifugal force, in all forms including sweet, sour, frozen, and aerated cream, and milk and cream mixtures.

(c) "Skim milk" means that fluid product of milk which remains after the removal of cream, and which contains less than one-half of 1 percent of butterfat.

(d) "Fluid milk products" means milk, flavored milk, cream, skim milk, flavored skim milk, cultured skim milk, buttermilk, and concentrated milk, either individually or collectively.

(e) "Pool milk" means milk, including milk products derived therefrom, which a handler has received as milk from producers.

(f) "Outside milk" means:

(1) All milk received from dairy farmers for other markets.

(2) All fluid milk products, other than cream, received at a regulated plant from an unregulated plant up to the total quantity of nonpool milk received at the unregulated plant, except exempt milk, receipts from New York order pool plants which are assigned to Class I pursuant to § 999.27, and receipts from Boston, Lowell-Lawrence, and Springfield regulated plants.

(3) All Class I milk, after subtracting receipts of Class I milk from regulated plants, which is disposed of to consumers in the marketing area from an unregulated plant, except a Boston or Springfield regulated plant, without its intermediate movement to another plant.

(g) "Concentrated milk" means any unsterilized liquid milk product, other than those products commonly known as evaporated milk and sweetened condensed milk, which is obtained by the evaporation of water from milk, and milk to which any other milk product may be added in the process of manufacture. For purposes of this subpart the weight of the fluid milk products used to produce the concentrated milk shall be used rather than the actual weight of the concentrated milk.

(h) "Exempt milk" means milk which is received at a regulated plant:

(1) In bulk from an unregulated plant, or from the dairy farmer who produced it, for processing and bottling, and for which an equivalent quantity of packaged milk is returned to the dairy farmer or to the operator of the unregulated plant during the same month, or

(2) In package form from an unregulated plant in return for an equivalent quantity of bulk milk moved from a regulated plant for processing and bottling during the same month.

MARKET ADMINISTRATOR

§ 999.10 *Designation.* The agency for the administration of this subpart shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 999.11 *Powers.* The market administrator shall have the following powers with respect to this subpart:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations of its terms and provisions; and

(d) To recommend to the Secretary amendments to it.

§ 999.12 *Duties.* The market administrator, in addition to the duties described in other sections of this subpart, shall:

(a) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with sureties thereon satisfactory to the Secretary;

(b) Pay, out of the funds provided by § 999.72, the cost of his bond, his own compensation, and all other expenses necessarily incurred in the maintenance and functioning of his office;

(c) Keep such books and records as will clearly reflect the transactions provided for in this order and surrender the same to his successor, or to such other person as the Secretary may designate;

(d) Prepare and disseminate for the benefit of producers, consumers, and handlers, statistics and information concerning the operation of this order;

(e) Promptly verify the information contained in the reports submitted by handlers; and

(f) Give each of the producers delivering to a plant as reported by the handler prompt written notice of their actual or potential loss of producer status for the first month in which the plant's status has changed or is changing to that of a nonpool plant.

CLASSIFICATION

§ 999.15 *Classes of utilization.* All milk and milk products received by a handler shall be classified as Class I milk or Class II milk. Subject to §§ 999.16, 999.17, and 999.18, the classes of utilization shall be as follows:

(a) Class I milk shall be all fluid milk products the utilization of which is not established as Class II milk.

(b) Class II milk shall be all fluid milk products the utilization of which is established:

(1) As being sold, distributed, or disposed of other than as or in milk; and other than as or in concentrated milk for fluid consumption, flavored milk or flavored skim milk, buttermilk, or cultured skim milk, for human consumption; and

(2) As plant shrinkage, not in excess of 2 percent of the volume handled.

§ 999.16 *Interplant movements of fluid milk products other than cream.* Fluid milk products, except cream, moved to another plant from a pool plant or from the city plant of an association of producers shall be classified as follows:

(a) If moved to another pool plant, they shall be classified in the class to which they are assigned at the plant of receipt pursuant to §§ 999.25 and 999.26.

(b) If moved to a buyer-handler's plant, they shall be classified as Class I milk, unless Class II utilization is established.

(c) If moved to a producer-handler's plant, or to any unregulated plant, except a plant subject to the New York, Boston, Lowell-Lawrence, or Springfield orders, they shall be classified as Class I milk up to the total quantity of the same form of fluid milk products utilized as Class I milk at the plant to which they were moved.

(d) If moved to a plant subject to the New York, Boston, Lowell-Lawrence, or Springfield orders, they shall be classified in the same class to which the receipt is assigned under such order, except that if moved to a plant subject to the New York order they shall be classsified as Class I milk if classified in Classes I–A, I–B, or I–C under the New York order, and shall be classified as Class II milk if classified in any class other than I–A, I–B, or I–C under the New York order.

(e) If moved to a regulated plant of a nonpool handler, except the city plant of an association of producers, or to any unregulated plant except a plant subject to the New York, Boston, Lowell-Lawrence, or Springfield orders, they shall be classified as Class I milk if retransferred to either of these types of regulated or unregulated plants.

§ 999.17 *Interplant movements of cream, and of milk products other than fluid milk products.* Cream and milk products other than fluid milk products moved from the regulated plant of a pool handler to another plant shall be classified as Class II milk.

§ 999.18 *Responsibility of handlers in establishing the classification of milk.* (a) In establishing the classification of any milk received by a handler from producers, the burden rests upon the handler who receives the milk from producers to account for the milk and to prove that such milk should not be classified as Class I milk.

(b) In establishing the classification of any pool milk received in the form of cream or milk products other than fluid milk products, or any nonpool milk or milk products received by a handler, the burden rests upon the receiving handler to account for such milk and milk products and to prove that such milk and milk products should not be classified as Class I milk.

DETERMINATION OF POOL PLANT STATUS

§ 999.20 *Basic requirements for pool plant status.* Each receiving plant shall be a pool plant during each month in which it meets the applicable requirements contained in §§ 999.21 or 999.22, together with the following basic requirements:

(a) A majority of the dairy farmers delivering milk to the plant hold certificates of registration issued pursuant to Chapter 94, Sections 16C and 16G, of the Massachusetts General Laws.

(b) The handler operating the plant holds a license which has been issued by the milk inspector of a city or town in the marketing area, pursuant to Chapter 94, Section 40, of the Massachusetts General Laws, or a majority of the dairy farmers delivering milk to the plant are approved by such an inspector as sources of supply for milk for sale in his municipality.

(c) The plant is operated neither as the plant of a producer-handler nor as a pool plant pursuant to the provisions of the Boston, Lowell-Lawrence, New York or Springfield orders.

(d) Each of a handler's plants which is a nonpool receiving plant during any of the months of October through February shall not be a pool plant in any of the following months of March through September in which it is operated by the same handler, an affiliate of the handler, or any person who controls or is controlled by the handler, unless its operation during October through February was in the handler's capacity as a producer-handler.

§ 999.21 *Additional requirements for city pool plants.* Each city receiving plant shall be a pool plant in each month in which at least 10 percent of its total receipts of fluid milk products other than cream is disposed of in the marketing area as Class I milk, or in which it is operated by an association of producers. In determining whether a city plant has disposed of the required 10 percent of its receipts as Class I milk in the marketing area, the total quantity of fluid milk products, other than cream, moved from that plant to another city plant which is a regulated plant shall be considered as a disposition of Class I milk in the marketing area up to the quantity of Class I milk disposed of in the marketing area from the other plant.

§ 999.22 *Additional requirements for country pool plants.* (a) Each country receiving plant shall be a pool plant in any month in which more than 50 percent of its total receipts of fluid milk products, other than cream, is disposed of as Class I milk directly to consumers in the marketing area or is shipped as milk to city plants at which more than 50 percent of the total receipts of fluid milk products, other than cream, is disposed of as Class I milk.

(b) Any country plant which is a pool plant continuously in each of the months from October through February shall be a pool plant continuously for the following months of March through September, regardless of the quantity then disposed of in the marketing area, if the handler's written request for pool plant status for such seven months' period is received by the market administrator before March 1 of that year. Changes in the identity of the handler operating the plant shall not affect the application of this paragraph.

ASSIGNMENT OF RECEIPTS TO CLASSES

§ 999.25 *Assignment of pool handlers' receipts to Class I milk.* For the purpose of computing the net quantity of each pool handler's Class I milk for which a value is to be computed pursuant to § 999.50, his receipts of milk and milk products shall be assigned to Class I milk in the following sequence:

(a) Receipts of exempt milk.

(b) Receipts from regulated plants under other Federal orders, which are assigned to Class I milk pursuant to § 999.27.

(c) Receipts of fluid milk products, other than cream and skim milk, from the regulated city plants of other handlers.

(d) Receipts of milk from producers at a handler's country plant equal to the volume of fluid milk products disposed of directly from the country plant as Class I milk outside the marketing area without being received at a city plant.

(e) Receipts of milk directly from producers at the handler's city plant.

(f) Receipts of outside milk at the handler's city plant.

(g) Receipts of fluid milk products, other than cream and skim milk, from the country pool plants of other handlers, in the order of the nearness of the plants to Worcester.

(h) Receipts of milk from producers at the handler's country plants not previously assigned pursuant to paragraph (d) of this section, in the order of the nearness of the plants to Worcester.

(i) Receipts of outside milk at the handler's country plants, in the order of the nearness of the plants to Worcester.

(j) Receipts of skim milk from regulated city plants and then from regulated country plants.

(k) All other receipts or available quantities of fluid milk products, from whatever source derived.

§ 999.26 *Assignment of pool handlers' receipts to Class II milk.* Each pool handler's receipts of milk and milk products which are not assigned to Class I milk pursuant to § 999.25 shall be assigned to Class II milk.

§ 999.27 *Receipts from other Federal order plants.* Receipts of fluid milk products from plants regulated by other Federal orders shall be assigned as follows:

(a) Receipts of fluid milk products from regulated plants under the Boston order shall be assigned to the class in which they are classified under that order.

(b) Receipts of fluid milk products, other than cream, from regulated plants under the Lowell-Lawrence or Springfield orders shall be assigned to Class I milk, unless the operators of the shipping plant and of the receiving plant file a joint written request to the market administrator for assignment to Class II milk of the fluid milk products so received. In such event, the fluid milk products shall be assigned to Class II milk up to the total Class II uses of fluid milk products other than cream at the receiving plant.

(c) Receipts from New York order pool plants shall be assigned to Class I milk if classified in Classes I–A or I–B under the New York order.

REPORTS OF HANDLERS

§ 999.30 *Monthly reports of pool handlers.* On or before the 8th day after the end of each month each pool handler shall, with respect to the milk products received by the handler during the month, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(a) The receipts of milk at each pool plant from producers, including the quantity, if any, received from his own production;

(b) The receipts of fluid milk products at each plant from any other handler assigned to classes pursuant to §§ 999.25 through 999.27;

(c) The receipts of outside milk and exempt milk at each plant; and

(d) The quantities from whatever source derived which were sold, distributed, or used, including sales to other handlers and dealers, classified pursuant to §§ 999.15 through 999.18.

§ 999.31 *Reports of nonpool handlers.* Each nonpool handler shall file with the market administrator reports relating to his receipts and utilization of fluid milk products. The reports shall be made at the time and in the manner prescribed by the market administrator, except that any handler who receives outside milk during any month shall file the report on or before the 8th day after the end of the month.

§ 999.32 *Reports regarding individual producers.* (a) Within 20 days after a producer moves from one farm to another, or starts or resumes deliveries to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant locations involved. The report shall also state, if known, the plant to which the producer had been delivering prior to starting or resuming deliveries.

(b) Within 15 days after the 5th consecutive day on which a producer has failed to deliver to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the last delivery was made, and the farm and plant locations involved. The report shall also state, if known, the reason for the producer's failure to continue deliveries.

§ 999.33 *Reports of payments to producers.* Each pool handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the month, his producer payroll for such month which shall show for each producer:

(a) The daily and total pounds of milk delivered with the average butterfat test thereof; and

(b) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

§ 999.34 *Maintenance of records.* Each handler shall maintain detailed and summary records showing all receipts, movements, and disposition of milk and milk products during the month, and the quantities of milk and milk products on hand at the end of the month.

§ 999.35 *Verification of reports.* For the purpose of ascertaining the correctness of any report made to the market administrator as required by this subpart or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(a) Verify the information contained in reports submitted in accordance with this subpart;

(b) Weigh, sample, and test milk and milk products; and

(c) Make such examination of records, operations, equipment, and facilities as the market administrator deems necessary for the purpose specified in this section.

§ 999.36 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under Section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

MINIMUM CLASS PRICES

§ 999.40 *Class I price at city plants.* The Class I price per hundredweight at city plants shall be determined for each month pursuant to this section. The latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the following computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday, the latest reported figures available on the next succeeding workday shall be used.

(a) Divide by .98 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the year 1926 as the base period.

(b) Divide by 3 the sum of the three latest monthly indexes of department store sales in the Boston Federal Reserve District adjusted for seasonal variations, as reported by the Federal Reserve System, with the years 1935–39 as the base period and divide the result so obtained by 1.26.

(c) Compute an index of grain-labor costs in the Boston milkshed in the following manner:

(1) Compute the simple average of the four latest weekly average retail prices per ton of dairy ration in the Boston milkshed, as reported by the United States Department of Agriculture, divide by 0.5044, and multiply by 0.6.

(2) For each of the States of Maine, Massachusetts, New Hampshire, and Vermont, compute the simple average, on a monthly equivalent basis, of the following farm wage rates reported by the United States Department of Agriculture: the rate per month with board and room; the rate per month with house; the rate per week with board and room; the rate per week without board or room; and the rate per day without board or room. To convert the weekly rates and the daily rate to monthly equivalents, multiply the weekly rate by 4.33 and the daily rate by 26. From the simple averages, compute a combined weighted average monthly rate, using the following weights: Maine, 10; Massachusetts, 6; New Hampshire, 7; and Vermont, 77. Divide the weighted average monthly rate by 0.6394, and multiply the result by 0.4.

(3) Add the results determined pursuant to subparagraphs (1) and (2) of this paragraph.

(d) Divide by 3 the sum of the final results computed pursuant to the preceding paragraphs of this section. Express the result as a whole number by dropping fractions of less than one-half or by raising fractions of one-half or more to the next whole number. The result shall be known as the formula index.

(e) Subject to the succeeding paragraphs of this section the Class I price

per hundredweight at city plants shall be as shown in the following table:

CLASS I PRICE SCHEDULE

| Formula index | Class I price per hundredweight | | |
|---|---|---|---|
| | Jan.-Feb.-Mar.-July-Aug.-Sept. | Apr.-May-June | Oct.-Nov.-Dec. |
| 50-56 | $2.21 | $1.77 | $2.65 |
| 57-63 | 2.43 | 1.99 | 2.87 |
| 64-70 | 2.65 | 2.21 | 3.09 |
| 71-77 | 2.87 | 2.43 | 3.31 |
| 78-84 | 3.09 | 2.65 | 3.53 |
| 85-90 | 3.31 | 2.87 | 3.75 |
| 91-97 | 3.53 | 3.09 | 3.97 |
| 98-104 | 3.75 | 3.31 | 4.19 |
| 105-111 | 3.97 | 3.53 | 4.41 |
| 112-118 | 4.19 | 3.75 | 4.63 |
| 119-125 | 4.41 | 3.97 | 4.85 |
| 126-132 | 4.63 | 4.19 | 5.07 |
| 133-139 | 4.85 | 4.41 | 5.29 |
| 140-146 | 5.07 | 4.63 | 5.51 |
| 147-152 | 5.29 | 4.85 | 5.73 |
| 153-159 | 5.51 | 5.07 | 5.95 |
| 160-166 | 5.73 | 5.29 | 6.17 |
| 167-173 | 5.95 | 5.51 | 6.39 |
| 174-180 | 6.17 | 5.73 | 6.61 |
| 181-187 | 6.39 | 5.95 | 6.83 |
| 188-194 | 6.61 | 6.17 | 7.05 |

If the formula index is more than 194 the price shall be increased at the same rate as would result from further extension of this table at the rate of extension in the six highest index brackets.

(f) The Class I price shall be 44 cents more than the price prescribed in paragraph (e) of this section if, under the provisions of the Boston order, less than 33 percent of the milk received by all pool handlers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this paragraph would cause the Class I price to be more than 88 cents above the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent increase as will result in a Class I price equal to the Class I price for the same month of the preceding year plus 88 cents.

(g) The Class I price shall be 44 cents less than the price prescribed in paragraph (e) of this section if, under the provisions of the Boston order, more than 41 percent of the milk received by all pool handlers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this paragraph would cause the Class I price to be more than 88 cents below the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent reduction as will result in a Class I price equal to the Class I price for the same month of the preceding year minus 88 cents.

(h) Notwithstanding the provisions of the preceding paragraphs of this section, the Class I price for any of the months of March through June of each year shall not be higher than the Class I price for the immediately preceding month, and the Class I price for any of the months of September through December of each year shall not be lower than the Class I price for the immediately preceding month.

(i) The Class I price determined under the preceding paragraphs of this section shall be increased or decreased to the extent of any increase or decrease in the rail tariff for the transportation of milk in carlots in tank cars for mileage distances of 201–210 miles, inclusive, as published in the New England Joint Tariff M No. 6 and supplements thereto or revisions thereof. The adjustment shall be made to the nearest one-half cent per hundredweight, and shall be effective in the first complete month in which such increase or decrease in the rail tariff applies.

§ 999.41 *Class II price at city plants.* The Class II price per hundredweight at city plants shall be determined for each month pursuant to this section:

(a) Divide by 33 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the month, multiply by 0.98, and multiply the result by 3.7. If the cream price described above is not reported as indicated, an equivalent determined as follows shall be used in lieu of such cream price: Compute the simple average of the differences between the cream prices reported for the latest three months and the monthly averages of the daily prices, using the mid-point of any range as one price, for Grade A (92-score) butter at wholesale in the Chicago market, as reported for the same months by the United States Department of Agriculture, times 1.22, and times 33. Then add to this amount the average of the butter prices described above multiplied by 33 and 1.22 for the current pricing month.

(b) Multiply by 7.85 the simple average of the prices per pound of roller process and spray process nonfat dry milk solids for human consumption, in carlots, f. o. b. Chicago area manufacturing plants, as reported by the United States Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the month during which such milk is delivered.

(c) Add the results obtained in paragraphs (a) and (b) of this section, and from the sum subtract the amount shown below for the applicable month.

| Month: | *Amount (cents)* |
|---|---|
| January and February | 67 |
| March and April | 79 |
| May and June | 85 |
| July | 79 |
| August and September | 73 |
| October, November, and December | 67 |

(d) For each month following the first month for which the amount determined pursuant to this paragraph is greater than 5 cents, the amount to be subtracted pursuant to paragraph (c) of this section shall be reduced by any plus amount determined as follows:

(1) Compute the simple average of the prices reported by the United States Department of Agriculture for milk for manufacturing purposes, f. o. b. plants United States, for each of the 12 months ending with the preceding month, as adjusted to a 3.7 percent butterfat basis by using the butterfat differential applicable pursuant to § 904.63 of the Boston order for the respective months.

(2) Compute the simple average of the Class II prices effective under the provisions of the Boston order in the 201–210 freight mileage zone for the same 12 months.

(3) Determine the amount, adjusted to the nearest one-half cent, by which the average price computed pursuant to subparagraph (1) of this paragraph exceeds the average price computed pursuant to subparagraph (2) of this paragraph.

§ 999.42 *Country plant price differentials.* In the case of receipts at country plants, the prices determined pursuant to §§ 999.40 and 999.41 shall be subject to differentials based upon the zone location of the plant at which the Class I milk or Class II milk was received. The zone location of each plant shall be based on the distance ascertained by the market administrator as the shortest distance from the plant to the City Hall in Worcester, Massachusetts, over highways on which the highway departments of the governing States permit milk tank trucks to move, or on the railway mileage distance to Worcester from the nearest railway shipping point for such plant, whichever is shorter. The applicable zone differentials shall be those set forth in the following table, as adjusted pursuant to § 999.43.

DIFFERENTIALS FOR DETERMINATION OF ZONE PRICES

| A Zone (miles) | B Class I price differentials (cents per cwt.) | C Class II price differentials (cents per cwt.) |
|---|---|---|
| Less than 40½ | (1) | (1) |
| 41-50 | −41.5 | −2.0 |
| 51-60 | −42.5 | −3.0 |
| 61-70 | −43.0 | −3.0 |
| 71-80 | −44.5 | −3.0 |
| 81-90 | −45.0 | −3.0 |
| 91-100 | −45.5 | −3.0 |
| 101-110 | −45.5 | −4.5 |
| 111-120 | −47.0 | −4.5 |
| 121-130 | −47.0 | −4.5 |
| 131-140 | −48.0 | −4.5 |
| 141-150 | −50.5 | −4.5 |
| 151-160 | −52.0 | −6.0 |
| 161-170 | −52.0 | −6.0 |
| 171-180 | −54.5 | −6.0 |
| 181-190 | −54.5 | −6.0 |
| 191-200 | −56.0 | −6.0 |
| 201-210 | −56.0 | −7.0 |
| 211-220 | −60.0 | −7.0 |
| 221-230 | −60.5 | −7.0 |
| 231-240 | −61.5 | −7.0 |
| 241-250 | −61.5 | −7.0 |
| 251-260 | −62.5 | −8.0 |
| 261-270 | −63.0 | −8.0 |
| 271-280 | −63.5 | −8.0 |
| 281-290 | −64.5 | −8.0 |
| 291 and over | −65.5 | −8.0 |

[1] No differential.

§ 999.43 *Automatic changes in zone price differentials.* In case the rail tariff for the transportation of milk in 40-quart cans in carlots of 200 or more cans or for the transportation of cream in 40-quart cans in carlots of 100-199 cans, as published in New England Joint Tariff M No. 6 and supplements thereto or revisions thereof, is increased or decreased, the zone price differentials set forth in § 999.42 shall be correspondingly increased or decreased in the manner and to the extent provided in this section. Such adjustments shall be effective beginning with the first complete month in which the changes in rail tariffs apply. If such rail tariff on milk is changed, the differentials set forth in Column B of the table shall be adjusted to the extent of any such change. If such rail tariff on

cream is changed, the differentials set forth in Column C of the table shall be adjusted to the extent of any such change divided by 9.05. Adjustments shall be made to the nearest one-half cent per hundredweight.

§ 999.44 *Use of equivalent factors in formulas.* If for any reason a price, index, or wage rate specified by this subpart for use in computing class prices and for other purposes is not reported or published in the manner described by this subpart, the market administrator shall use a price, index, or wage rate determined by the Secretary to be equivalent to or comparable with the factor which is specified.

§ 999.45 *Announcement of class prices.* The market administrator shall make public announcements of the class prices as follows:

(a) He shall announce the Class I price for each month on the 25th day of the preceding month, except that if such 25th day is a Sunday or legal holiday he shall announce the Class I price on the next succeeding workday.

(b) He shall announce the Class II price on or before the 5th day after the end of each month.

BLENDED PRICES TO PRODUCERS

§ 999.50 *Computation of net value of milk used by each pool handler.* For each month, the market administrator shall compute the net value of milk which is sold, distributed, or used by each pool handler, in the following manner:

(a) From the handler's total Class I milk, subtract all receipts which have been assigned to Class I milk pursuant to § 999.25 (a), (b), (c), (g), and (j);

(b) From the handler's total Class II milk, subtract all receipts which have been assigned to Class II milk pursuant to § 999.26, except receipts of milk from producers;

(c) Multiply the remaining quantities of Class I milk and Class II milk by the prices applicable pursuant to §§ 999.40, 999.41, and 999.42.

(d) Add together the resulting value of each class;

(e) Add the total amount of the payment required from the pool handler pursuant to § 999.66; and

(f) Subtract the value obtained by multiplying the quantities assigned to Class I milk pursuant to § 999.25 (f), (i), and (k) by the price applicable pursuant to §§ 999.41 and 999.42.

§ 999.51 *Computation of the basic blended price.* The market administrator shall compute the basic blended price per hundredweight of milk delivered during each month in the following manner:

(a) Combine into one total the respective net values of milk, computed pursuant to § 999.50 and payments required pursuant to §§ 999.65 and 999.66 for each handler from whom the market administrator has received at his office, prior to the 11th day after the end of such month, the report for such month and the payments required pursuant to § 999.61 (b) and §§ 999.65 and 999.66 for milk received during each month since the effective date of the most recent amendment to this subpart;

(b) Add the amount of unreserved cash on hand at the close of business on the 10th day after the end of the month from payments made to the market administrator by handlers pursuant to §§ 999.61, 999.62, 999.65, 999.66, and 999.67;

(c) Deduct the amount of the plus differentials, and add the amount of the minus differentials, which are applicable pursuant to § 999.64;

(d) Divide by the total quantity of producer milk for which a value is determined pursuant to paragraph (a) of this section; and

(e) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments set forth in §§ 999.61 and 999.62. This result, which is the minimum blended price for milk containing 3.7 percent butterfat received from producers at city plants, shall be known as the basic blended price.

§ 999.52 *Announcement of blended prices.* On the 12th day after the end of each month the market administrator shall mail to all pool handlers and shall publicly announce:

(a) Such of these computations as do not disclose information confidential pursuant to the act;

(b) The zone blended prices per hundredweight resulting from adjustment of the basic blended price by the country plant price differentials pursuant to § 999.64; and

(c) The names of the pool handlers, designating those whose milk is not included in the computations because of failure to make reports or payments pursuant to this subpart.

PAYMENTS FOR MILK

§ 999.60 *Advance payments.* On or before the 10th day after the end of each month, each pool handler shall make payment to producers for the approximate value of milk received during the first 15 days of such month. In no event shall such advance payment be at a rate less than the Class II price for such month. The provisions of this section shall not apply to any handler who, on or before the 17th day after the end of the month, makes final payment as required by § 999.61 (a).

§ 999.61 *Final payments.* Each pool handler shall make payment for the total value of milk received during such month as required to be computed pursuant to § 999.50 as follows:

(a) On or before the 25th day after the end of each month to each producer at not less than the basic blended price per hundredweight, subject to the differentials provided in §§ 999.63 and 999.64 for the quantity of milk delivered by such producer; and

(b) To producers, through the market administrator, by paying to, on or before the 23d day after the end of each month, or receiving from the market administrator, on or before the 25th day after the end of each month, as the case may be, the amount by which the payments at the basic blended price adjusted by the plant and farm location differentials provided in § 999.64 are less than or exceed the value of milk as required to be computed for each such handler pursuant to § 999.50, as shown in a statement rendered by the market administrator on or before the 20th day after the end of such month.

§ 999.62 *Adjustments of errors in payments.* Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments pursuant to §§ 999.61 (b), 999.65, or 999.66, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is payable by the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment to any producer for milk delivered to any handler discloses payment to such producer of an amount less than is required by § 999.61 (a), the handler shall make up such payment to the producer not later than the time of making final payment for the month in which such error is disclosed.

§ 999.63 *Butterfat differential.* Each handler shall, in making payments to each producer for milk received from him, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator as follows: Divide by 33 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the period between the 16th day of the preceding month and the 15th day inclusive of the month during which such milk is delivered, subtract 1.5 cents, and divide the result by 10. If the cream price described above is not reported as indicated, an equivalent determined as follows shall be used in lieu of such cream price: Compute the simple average of the differences between the cream price reported for the latest three months and the monthly averages of the daily price, using the mid-point of any range as one price, for Grade A (92-score) butter at wholesale in the Chicago market, as reported for the same months by the United States Department of Agriculture, times 1.22, and times 33. Then add to this amount the average of the butter prices described above, for the period between the 16th day of the preceding month and the 15th day inclusive of the month during which such milk is delivered, multiplied by 33 and 1.22.

§ 999.64 *Location differentials.* The payments to be made to producers by

handlers pursuant to paragraph (a) of § 999.61 shall be subject to the Class I price differentials applicable pursuant to § 999.42 and to further differentials as follows:

(a) With respect to milk delivered by a producer whose farm is located in Franklin, Hampshire, Hampden, Worcester, Middlesex, or Norfolk Counties in Massachusetts, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to §§ 999.40 and 999.42 which is effective at the plant to which such milk is delivered, in which event there shall be added an amount which will give as a result such price.

§ 999.65 *Payments on outside milk.* Within 23 days after the end of each month handlers shall make payments to producers, through the market administrator, as follows:

(a) Each buyer-handler or producer-handler whose receipts of outside milk are in excess of his total use of Class II milk after deducting receipts of cream shall make payment on such excess quantity at the difference between the Class I and Class II prices pursuant to §§ 999.40, 999.41, and 999.42 effective for the location or freight mileage zone of the plant at which the handler received the outside milk.

(b) Each handler who operates an unregulated plant from which outside milk is disposed of to consumers in the marketing area without intermediate movement to another plant shall make payment on the quantity so disposed of. The payment shall be at the difference between the Class I and Class II prices pursuant to §§ 999.40, 999.41, and 999.42 effective for the location or freight mileage zone of the handler's plant.

§ 999.66 *Payments on Class I receipts from other Federal order plants.* Within 23 days after the end of each month, each pool handler, buyer-handler, or producer-handler who received Class I milk from a New York, Boston, Lowell-Lawrence, or Springfield order regulated plant during the month shall make such payment to producers, through the market administrator, as results from the following computation:

(a) Adjust the price pursuant to §§ 999.40 and 999.42 effective for the location or freight mileage zone of the plant from which the Class I milk was received by the butterfat differential calculated pursuant to § 999.63.

(b) Adjust the zone Class I price applicable under the other Federal order (Class I–A or I–B in the case of a New York order plant) by the butterfat differential applicable under that order.

(c) If the adjusted Class I price calculated under paragraph (a) of this section exceeds the corresponding price calculated under paragraph (b) of this section, multiply the quantity of Class I receipts from the other Federal order plant by the difference in price.

§ 999.67 *Adjustment of overdue accounts.* Any balance due pursuant to §§ 999.61, 999.62, 999.65, and 999.66 to or from the market administrator on the 10th day of any month, for which remittance has not been received in, or paid from, his office by the close of business on that day, shall be increased one-half of 1 percent, effective the 11th day of such month.

§ 999.68 *Statements to producers.* In making the payments to producers prescribed by § 999.61 (a), each pool handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(a) The month and the identity of the handler and of the producer;

(b) The total pounds and average butterfat test of milk delivered by the producer;

(c) The minimum rate or rates at which payment to the producer is required under the provisions of § 999.61 (a);

(d) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(e) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under §§ 999.70 and 999.71, together with a description of the respective deductions; and

(f) The net amount of payment to the producer.

MARKETING SERVICES

§ 999.70 *Marketing service deduction; nonmembers of an association of producers.* In making payments to producers pursuant to § 999.61 (a), each handler shall, with respect to all milk delivered by each producer other than himself during each month, except as set forth in § 999.71, deduct 3 cents per hundredweight, or such lesser amount as the market administrator shall determine to be sufficient, and shall on or before the 25th day after the end of each month, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator only in providing for market information to, and for verification of weights, samples, and tests of milk delivered by, such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk delivered by, such producers.

§ 999.71 *Marketing service deductions with respect to members of an association of producers.* In the case of producers who are members of an association of producers which is actually performing the services set forth in § 999.70, each handler shall, in lieu of the deductions specified in § 999.70, make such deductions from payments made pursuant to § 999.61 (a) as may be authorized by such producers and pay, on or before the 25th day after the end of each month, such deduction to such associations.

ADMINISTRATION EXPENSE

§ 999.72 *Expense of administration.* Within 23 days after the end of each month, each handler shall make payment to the market administrator of his pro rata share of the expense of administration of this subpart, based on the handler's receipts of fluid milk products, other than cream, during the month. The payment shall be at the rate of 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, on the handler's receipts of milk from producers, including receipts from his own production, receipts of exempt milk, processed at a regulated plant, and his receipts of outside milk, except receipts of outside milk from other Federal order plants; and at the rate by which the rate applicable to milk received from producers exceeds the rate of assessment applicable under the other Federal order, on his receipts from other Federal order plants.

OBLIGATIONS

§ 999.73 *Termination of obligations.* The provisions of this section shall apply to any obligation under this subpart for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable.

Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this order, to make available to the market administrator or his representatives all books or records required by this subpart to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involv-

ing fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c (15) (A) of the act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 999.80 *Effective time.* The provisions of this subpart, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 999.81.

§ 999.81 *Suspension or termination.* The Secretary may suspend or terminate this subpart or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This subpart shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 999.82 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this subpart, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 999.83 *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions of this subpart, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this subpart, over and above the amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 999.84 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this subpart.

[F. R. Doc. 51-11127; Filed, Sept. 14, 1951; 8:50 a. m.]

## DEPARTMENT OF COMMERCE

### Patent Office

### [ 37 CFR Parts 100, 110 ]

RULES OF PRACTICE AND FORMS FOR TRADE-MARK CASES

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Patent Office proposes to amend certain rules and regulations relating to proceedings before it in trade-mark cases.

The amendments are proposed to be issued pursuant to the authority contained in the trade-mark law, secs. 1, 41, act of July 5, 1946, 60 Stat. 427; 15 U. S. C. 1051, 1123, and other authority.

All persons who desire to submit written data, views, arguments or suggestions, for consideration in connection with the proposed amendments, are invited to forward the same to the Commissioner of Patents, Washington 25, D. C., on or before October 15, 1951. An oral hearing is not scheduled.

The text of the proposed amendments follows.

1. Section 100.48 (Trade-mark rule 4.8) is proposed to be amended by inserting "or other party" after "applicant" in the second sentence so that said section will read as follows:

§ 100.48 *Correspondence held with attorney.* When an attorney or other recognized person shall have filed his power of attorney or authorization, duly executed, the correspondence will be held with him. Double correspondence with an applicant or other party and his attorney, or with two attorneys, will not be undertaken. If more than one attorney be appointed, correspondence will be held with the one last appointed unless otherwise requested.

2. Section 100.73 (Trade-mark rule 7.3) is proposed to be amended by adding the following paragraph:

§ 100.73 *Requirements for application; statement.* * * *

(j) If more than one item of goods is specified in the application, the dates of use required in paragraphs (g) and (h) of this section may be only of one of the items specified, provided the particular item to which the dates apply is designated.

3. Section 100.141 (Trade-mark rule 14.1) is proposed to be amended by changing "Federal Alcohol Administration" in the last paragraph to "Alcohol Tax Unit, Bureau of Internal Revenue," so that the last paragraph will read as follows:

§ 100.141 *Federal label approval required in certain cases.* * * *

(d) Labels for wines (Class 47) and for distilled alcoholic liquors (Class 49) must be approved by the Alcohol Tax Unit, Bureau of Internal Revenue.

4. Section 100.194 (Trade-mark rule 19.4) is proposed to be amended by adding the following sentences at the end thereof:

§ 100.194 *Motions to dissolve interference.* * * * Oral hearings will be held only at the request of any of the parties and on order of the Examiner of Trade-Marks. Briefs in support of or in opposition to such motions shall be filed within thirty days after transmittal of the motion to the Examiner of Trade-Marks or on dates set by such Examiner, and if not so filed consideration thereof may be refused.

5. Section 100.203 (Trade-Mark rule 20.3) is proposed to be amended to read as follows:

§ 100.203 *Notice filed by attorney.* An unverified notice of opposition may be filed by a duly authorized attorney. The unverified notice and the required fee must be filed in the Patent Office within thirty days after publication (§ 100.151) of the mark sought to be registered, but such opposition will be null and void unless verified by the opposer and the verification or verified notice filed in the Patent Office within thirty days after such filing, or within such further time after such filing as may be fixed by the Commissioner upon request made before the expiration of said thirty days.

6. Section 100.262 (Trade-Mark rule 26.2) is proposed to be amended to read as follows:

§ 100.262 *Time and manner of ex parte appeals.* (a) Such appeal must be taken within six months from the date of the action appealed from and must be accompanied by a statement of the reasons therefor. The appellant's brief shall be filed within sixty days after the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The Examiner shall, within such time as may be directed by the Commissioner, furnish a written statement in answer to the appellant's brief, supplying a copy to the appellant. By delegation from the Secretary of Commerce, such appeals may be heard and decided by an assistant commissioner or an examiner-in-chief. Cases which have been heard and decided on appeal to the Commissioner will not be reopened except by his order.

(b) The appellant shall indicate, not later than at the time of filing his brief, if he desires an oral hearing. If no request for oral hearing has been made, the appeal will be considered on brief. If the appellant has requested an oral hearing, a day of hearing will be set, and due notice thereof given. Hearings will be held as stated in the notice and oral argument will be limited to one-half hour unless otherwise permitted.

7. Section 100.263 (Trade-mark rule 26.3) is proposed to be amended to read as follows:

§ 100.263 *Appeal to the Commissioner from decision of Examiner of Interferences.* Any party to an interference, opposition, cancellation, or a concurrent use proceeding may appeal, stating the reasons therefor, from the final decision of the Examiner of Interferences to the Commissioner in person within the time limit, not less than thirty days, prescribed in the decision, or, if no time limit is prescribed, within thirty days, upon payment of the prescribed fee. The appellant's brief shall be filed within sixty days after the date of appeal. If the brief is not filed within the time al-

lowed, the appeal may be dismissed. The brief of the appellee shall be filed within thirty days after the filing of the appellant's brief. A reply brief, if filed, shall be due not less than twenty days after the filing of appellee's brief. Briefs and hearings on appeal shall be subject to §§ 100.241 and 100.242 insofar as applicable. The date for hearing will be fixed by the Commissioner in each case. By delegation from the Secretary of Commerce, such appeals may be heard and decided by an assistant commissioner or an examiner-in-chief.

8. Section 100.291 (Trade-mark rule 29.1) is proposed to be amended by changing "statement and declaration" in the third sentence, to read "application or part thereof," so that the first paragraph will read as follows:

§ 100.291 *Certificate.* (a) When the requirements of the law and of the rules have been complied with, and the Patent Office has adjudged a mark registrable, a certificate will be issued to the effect that the applicant has complied with the law and that he is entitled to registration of his mark on the Principal Register or on the Supplemental Register as the case may be. The certificate will state the date on which the application for registration was filed in the Patent Office, the act under which the mark is registered, the date of issue and the number of the certificate. Attached to the certificate and forming a part thereof will be a copy of the drawing of the mark and a printed copy of the written application or part thereof. A notice of the affidavit requirement of section 8 (a) of the act (§ 100.321) will be attached to the certificate.

9. Section 110.1 (Trade-mark form 1) is proposed to be amended by changing the second paragraph to read as follows:

The trade-mark was first used on (2a) ---------- on (3) ---------- and first (Date)
used on said goods in commerce (4) ---------- ---------- which may lawfully be regulated by Congress on ----------. (Date)

and by adding the following footnote:

(2a) If one or more items are specified in the list of goods appearing in the statement, and the dates given apply to each item or items, insert "the goods specified." If more than one item is specified in the statement, and the dates given apply only to a particular item, insert the name of such item.

10. Sections 110.2 and 110.3 (Trade-mark forms 2 and 3) are proposed to be amended by changing the second paragraph to read:

The trade-mark was first used on ------ on ---------- and first used on said goods (Date)
in commerce ---------- which may lawfully be regulated by Congress on ----------. (Date)

(Sec. 41, 60 Stat. 440; 15 U. S. C. 1123)

JOHN A. MARZALL,
*Commissioner of Patents.*

Approved:

CHARLES SAWYER,
*Secretary of Commerce.*

[F. R. Doc. 51-11121; Filed, Sept. 14, 1951; 8:45 a. m.]

# NOTICES

## DEPARTMENT OF DEFENSE

### Department of the Army

DEMOLITION OF WRECK OF "BENEVOLENCE" IN PACIFIC OCEAN NEAR ENTRANCE TO GOLDEN GATE, CALIF.

SECTION 1. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U. S. C. 1), and Chapter XIX of the Army Appropriations Act of July 9, 1918 (40 Stat. 892; 33 U. S. C. 3), and compatible with section 3 of the Oil Pollution Act of June 7, 1924 (43 Stat. 605; 33 U. S. C. 433), notice is hereby given that, during the demolition, destruction, and disposition of the wreck of the "Benevolence," under the authority vested in the Secretary of the Army by section 19 of the River and Harbor Act of March 8, 1899 (30 Stat. 1154; 33 U. S. C. 414), the following temporary regulations shall be in force and govern navigation in the vicinity of the wreck of the "Benevolence," sunk in the Pacific Ocean near the entrance to Golden Gate, California, at a point bearing approximately 250° true, 4,300 yards, from Mile Rocks Light:

(a) A restricted area is hereby established comprising a circular area having a radius of 500 yards centered on the wreck of the "Benevolence" as described in this notice.

(b) On and after the commencement of the demolition operations, the date of which will be determined and published by the District Engineer, Corps of Engineers, San Francisco, California, no vessel shall enter or remain in the restricted area without permission from the aforementioned District Engineer, and any person or corporation violating the regulations in this notice shall be subject to the penalties prescribed by law.

SEC. 2. In the demolition, destruction, and disposition of the wreck of the "Benevolence," the Chief of Engineers, United States Army, and the District Engineer, Corps of Engineers, San Francisco, California, are hereby empowered to exercise authority and discretion with respect to all aspects of the operations, including but not limited to the following:

(a) Publication of notice of the commencement of the demolition operations.

(b) Marking of the restricted area and any other areas affected.

(c) Means and methods to be employed in the execution of demolition operations.

(d) Determination of the necessity for and the precautions, if any, to be taken with respect to the discharge of oil from the wreck.

(e) Publication of notice of the conclusion of the demolition operations and the time of expiration of the regulations in this notice.

[SEAL] WM. E. BERGIN,
*Major General, U. S. Army,*
*The Adjutant General.*

[F. R. Doc. 51-11129; Filed, Sept. 14, 1951; 8:50 a. m.]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[Misc. 61631]

OREGON

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS RESTORED FROM BAKER PROJECT

SEPTEMBER 11, 1951.

An order of the Bureau of Reclamation dated April 20, 1951, concurred in by the Associate Director, Bureau of Land Management, June 1, 1951, revoked the Departmental order of February 25, 1922 so far as it withdrew under the provisions of the Reclamation Act of June 17, 1902 (32 Stat. 388), the following described land in connection with the Baker Project, Oregon, and provided that such revocation shall not affect the withdrawal of any other lands by said order or affect any other order withdrawing or reserving the lands described:

WILLAMETTE MERIDIAN

T. 6 S., R. 39 E.,
Sec. 12, NE¼.
T. 6 S., R. 40 E.,
Sec. 26, lot 1;
Sec. 35, lots 7 to 13, inclusive.
T. 7 S., R. 40 E.,
Sec. 2, E½SE¼;
Sec. 11, NE¼NE¼;
Sec. 12, NW¼, NE¼SW¼, SW¼SE¼;
Sec. 13, SE¼NE¼, W½NE¼, E½NW¼, NE¼SE¼.
T. 7 S., R. 41 E.,
Sec. 17, S½S½;
Sec. 18, lots 3, 4, E½SW¼, SE¼;
Sec. 19, NE¼NE¼;
Sec. 20, E½NE¼, NW¼NW¼, NE¼SE¼;
Sec. 21, W½.

The above areas aggregate 1,981.48 acres.

The lands are chiefly valuable for range management purposes.

No applications for these lands may be allowed under the homestead, small tract, desert-land, or any other nonmineral public-land laws, unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon consideration of an application.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid

existing rights and the provisions of existing withdrawals, become subject to application, petition, location, and selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land Office, Portland, Oregon, shall be acted upon in accordance with the regulations contained in § 295.8 of title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title. Inquiries concerning these lands shall be addressed to the Manager, Land Office, Portland, Oregon.

WILLIAM PINCUS,
*Acting Director.*

[F. R. Doc. 51–11102; Filed, Sept. 14, 1951; 8:45 a. m.]

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[Blackfoot 046017]

IDAHO

ORDER PROVIDING FOR THE OPENING OF PUBLIC LANDS

SEPTEMBER 11, 1951.

On January 22, 1935, The First Assistant Secretary of the Interior approved a recommendation that the withdrawal of August 2, 1932, of the hereinafter-described lands under the provisions of the act of March 15, 1910 (36 Stat. 237; 43 U. S. C. 643), for proposed application by the State of Idaho for segregation of such lands for reclamation under the Carey Act of August 18, 1894 (28 Stat. 422; 43 U. S. C. 641) be revoked without provision for the restoration of the lands to public entry.

Pursuant to the authority contained in said act of March 15, 1910, and to Departmental Order No. 2583 of August 16, 1950 sec. 2.22 15 F. R. 5643, such lands, described below, shall become subject to application, petition, location, and selection as herein provided:

BOISE MERIDIAN

T. 4 S., R. 2 E.,
Sec. 34, SE¼SE¼;
Sec. 35, SW¼SW¼;
T. 5 S., R. 2 E.,
Sec. 1, W½SW¼;
Sec. 2, W½E½, NW¼NW¼, E½NW¼, SW¼, SE¼SE¼;
Sec. 11;
Sec. 12, SW¼NW¼;
Sec. 13, N½NE¼, W½;
Sec. 14, N½;
Sec. 24, S½NE¼, W½, SE¼;
Sec. 25, NE¼.
T. 5 S., R. 3 E.,
Sec. 18, lot 1, NE¼NW¼;
Sec. 19, lots 1, 2, 3, 4, E½W½, W½E½, SE¼NE¼, E½SE¼;
Sec. 20, SW¼NW¼, W½SW¼;
Sec. 21, N½NE¼, SE¼NE¼, NE¼NW¼, E½SE¼;
Sec. 22, S½NW¼, S½;
Sec. 26, W½;
Secs. 27 to 30, inclusive;
Sec. 31, E½;
Sec. 32;
Sec. 33, N½, SW¼, NW¼SE¼;
Sec. 34, N½, N½S½;
Sec. 35, NW¼.
T. 6 S., R. 3 E.,
Secs. 1 and 2;
Sec. 3, SE¼NE¼, E½SE¼, SW¼SE¼;
Sec. 4, lots 3, 4, S½NE¼, SE¼NW¼, S½;
Sec. 5;
Sec. 6, NE¼, SE¼SE¼;
Secs. 7 and 8;
Sec. 9, W½NW¼, SE¼NW¼, SW¼, SW¼SE¼;
Sec. 10, NE¼, N½SE¼, SW¼SE¼, SE¼SW¼;
Sec. 11, N½NE¼;
Sec. 12, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 13, SW¼, S½SE¼, NE¼SE¼;
Sec. 14, SE¼, SW¼NW¼, W½SW¼;
Sec. 15, SE¼NE¼, W½NE¼, SE¼, W½;
Sec. 17, N½, SE¼;
Sec. 18, NE¼;
Sec. 21, N½;
Secs. 22, 23, and 24;
Sec. 25, N½;
Sec. 26, N½;
Sec. 27, NE¼.
T. 5 S., R. 4 E.,
Sec. 13, SW¼, W½SE¼;
Sec. 14, SE¼;
Sec. 23;
Sec. 24, W½, W½E½, SE¼NE¼, E½SE¼;
Secs. 25 and 26;
Sec. 31, lots 2, 3, 4, 5, E½W½, W½E½, SE¼NE¼, E½SE¼;
Sec. 32, S½;
Sec. 33, S½S½;
Sec. 34, SW¼SW¼, lot 9;
Sec. 35, NE¼.
T. 6 S., R. 4 E.,
Secs. 1 to 15, inclusive;
Sec. 17;
Sec. 18, E½, SE¼NW¼, E½SW¼, lots 3, 4;
Secs. 19 to 28, inclusive;
Sec. 29, N½;
Sec. 30, N½;
Sec. 32, SE¼;
Secs. 33, 34, and 35.
T. 7 S., R. 4 E.,
Sec. 1, N½, SW¼;
Secs. 2, 3, and 4;
Sec. 5, E½;
Secs. 9,10, and 11;
Sec. 12, E½, NW¼;
Sec. 13, NW¼NE¼, SW¼;
Secs. 14, 15, and 21;
Sec. 22, N½, SW¼, W½SE¼;
Sec. 23, N½, N½SW¼;
Sec. 25;
Sec. 26, S½NE¼, S½;
Sec. 27, N½NE¼, W½, SE¼;
Sec. 28, N½;
Sec. 34, NE¼;
Sec. 35.
T. 8 S., R. 4 E.,
Secs. 1 and 2.
T. 5 S., R. 5 E.,
Sec. 19, S½;
Sec. 20, NW¼NE¼, S½NE¼, SE¼NW¼, S½;
Sec. 21, SW¼SW¼;
Sec. 25;
Sec. 26, NE¼, E½NW¼, S½;
Sec. 27, lot 1, NE¼NW¼, S½NW¼, S½;
Sec. 28, NW¼NE¼, S½NE¼, SE¼, W½;
Secs. 29 to 35, inclusive.
T. 6 S., R. 5 E.,
Secs. 1, 2, 3 and 4;
Sec. 5, lots 1, 2, 3, 4, S½N½, N½S½, SE¼SE¼;
Sec. 6, lots 1, 2, 3, 4, S½NE¼, SE¼NW¼, N½SE¼;
Sec. 7, lots 1, 2, 3, 4, E½W½, SE¼, W½NE¼;
Sec. 8, SW¼SW¼;
Sec. 9, N½N½;
Sec. 10, N½, NE¼SW¼, N½SE¼;
Secs. 11, 12, and 13;
Sec. 14, NE¼, E½NW¼, NW¼NW¼, N½SE¼;
Sec. 17, W½E½, W½;
Secs. 18 and 19;
Sec. 20, N½NE¼, SW¼NE¼, W½;
Sec. 21, SE¼NE¼, SW¼SW¼, E½SE¼;
Sec. 22, W½SW¼, SE¼SW¼;
Sec. 24, N½NE¼, SE¼NE¼, NE¼NW¼;
Sec. 27, N½NE¼, SW¼NE¼, W½;
Sec. 28, NE¼NE¼, S½N½, NW¼NW¼, S½;
Sec. 29, W½;
Sec. 30;
Sec. 31, lots 1, 2, 3, 4, E½W½; NE¼;
Sec. 32, NE¼NE¼, W½NW¼, NW¼SE¼;
Sec. 33, E½NW¼, SW¼;

Sec. 34, S½NE¼, W½NW¼, S½;
Sec. 35, NE¼NW¼, S½NW¼, SW¼, E½.
T. 7 S., R. 5 E.,
Sec. 1;
Sec. 2, lots 1, 2, S½NE¼, S½;
Secs. 3 and 4;
Sec. 5, lots 1, 2, 3, 4, S½N½, SE¼;
Sec. 6, lots 1, 2, 3, 4, 5, S½NE¼, SE¼NW¼, W½SE¼;
Sec. 7, lots 1, 2, E½NW¼, NE¼SW¼;
Sec. 8, NE¼, E½NW¼, S½;
Secs. 9 to 15, inclusive;
Sec. 17;
Sec. 18, E½NE¼, SW¼NE¼, SE¼;
Sec. 19, E½, E½W½;
Secs. 20 to 31, inclusive;
Secs. 33 and 34;
Sec. 35, NW¼.
T. 8 S., R. 5 E.,
Sec. 3, lots 1, 2, 3, 4, SW¼;
Secs. 4 and 6.
T. 5 S., R. 6 E.,
Sec. 31, lot 10, SE¼SW¼.
T. 6 S., R. 6 E.,
Sec. 1, lots 1, 2, S½N½, S½;
Sec. 2, S½;
Sec. 3, NE¼SW¼, SE¼, SW¼NW¼;
Sec. 4, SW¼, W½SE¼;
Sec. 5, S½;
Sec. 6, W½, SE¼;
Secs. 7 to 10, inclusive;
Sec. 11, NE¼, S½;
Secs. 12 to 15, inclusive;
Secs. 17 and 18;
Sec. 19, lots 1, 2, 3, NE¼, E½W½, S½SE¼, NE¼SE¼;
Secs. 20 to 29, inclusive;
Sec. 30, E½NE¼;
Sec. 32, NE¼, NE¼NW¼, E½SE¼;
Secs. 33, 34, and 35.
T. 7 S., R. 6 E.,
Secs. 1, 2, and 3;
Sec. 4, N½, N½SE¼, SE¼SE¼;
Sec. 6, lots 5, 6, 7, E½SW¼, SW¼SE¼;
Sec. 7, SE¼NE¼, W½, SE¼;
Sec. 8, S½NW¼, SW¼;
Sec. 9, E½NE¼, NE¼SE¼;
Secs. 10 to 14, inclusive;
Sec. 15, S½NE¼, N½SE¼;
Secs. 17 to 20, inclusive;
Sec. 21, NW¼NW¼, S½NW¼, SW¼, S½SE¼;
Sec. 23, N½, N½SE¼, SE¼SE¼;
Secs. 24 and 25;
Sec. 26, E½NE¼, E½SW¼, SE¼;
Sec. 27, NW¼, S½;
Secs. 28, 29, and 30;
Sec. 31, N½, SE¼;
Secs. 32 and 33;
Sec. 34, SE¼SE¼, W½SE¼, W½, NE¼;
Sec. 35, E½, E½W½.
T. 8 S., R. 6 E.,
Sec. 1;
Sec. 2, lots 1, 2, 3, NE¼SW¼, SE¼;
Sec. 3, lots 3, 4, SW¼, W½SE¼;
Secs. 4 and 10;
Sec. 11, SW¼NW¼, SW¼, S½SE¼;
Sec. 12, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 13, NE¼NE¼, SW¼NW¼, W½SW¼;
Secs. 14 and 23;
Sec. 24, W½, SW¼SE¼;
Secs. 25, 26, and 35.
T. 9 S., R. 6 E.,
Sec. 1, Lot 1, 4, S½NW¼, SW¼;
Sec. 2;
Sec. 12, N½NW¼, SE¼NW¼, W½SW¼;
S½SE¼, NE¼SE¼;
Sec. 13, SE¼NE¼, W½NW¼, SW¼.
T. 5 S., R. 7 E.,
Sec. 31, SE¼SE¼;
Sec. 32, lots 1, 3, 4, NE¼NE¼, S½NE¼, SE¼, NE¼SW¼, S½SW¼;
Sec. 33;
Sec. 34, lot 2.
T. 6 S., R. 7 E.,
Sec. 2, lot 4;
Secs. 4 and 5;
Sec. 6, lots 1, 2, 3, 4, 5, S½NE¼, SE¼SW¼, SE¼;
Secs. 7 and 8;
Sec. 9, NW¼, S½;
Sec. 10, SW¼NE¼, NW¼NW¼, S½NW¼, S½;
Sec. 11, NE¼SW¼, S½SW¼, S½SE¼;
Sec. 13, S½NE¼, SE¼SW¼;
Sec. 14, N½, SW¼, NE¼SE¼, W½SE¼;
Secs. 15, 17 to 23, inclusive;
Sec. 24, NW¼, S½;
Secs. 25 to 35, inclusive.
T. 7 S., R. 7 E.,
Secs. 1 to 15, inclusive and 17 to 35, inclusive.
T. 8 S., R. 7 E.,
Secs. 1 to 15, inclusive and 17 and 18;
Sec. 19, lot 1, NE¼, NE¼SW¼, SE¼, NE¼NW¼;
Secs. 20 to 29, inclusive;
Sec. 30, lots 2, 3, 4, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 31, lots 1, 2, NE¼NW¼, SE¼SE¼;
Secs. 32 to 35, inclusive.
T. 9 S., R. 7 E.,
Secs. 1 to 15, inclusive;
Sec. 17;
Sec. 18, lots 1, 2, 3, E½W½, E½;
Sec. 19, E½;
Secs. 20, 21, 22, 23, 27, and 28;
Sec. 29, E½, N½NW¼, SE¼NW¼;
Sec. 30, NE¼NE¼;
Sec. 32, E½NE¼, NE¼SE¼;
Sec. 33.
T. 6 S., R. 8 E.,
Sec. 1, S½SE¼;
Sec. 3, lot 12;
Sec. 4, lots 4, 5, 8, 9, SW¼, SW¼SE¼;
Sec. 5;
Sec. 6, E½, SE¼NW¼;
Sec. 7, NE¼, N½SE¼, SW¼SE¼, SE¼SW¼;
Secs. 8, 9, and 10;
Sec. 11, E½W½, W½E½;
Sec. 12, E½SW¼, SE¼, E½NE¼;
Secs. 13, 14, and 15;
Sec. 17, E½, SE¼NW¼, N½NW¼, SW¼;
Sec. 19, lot 4, S½NE¼, E½SW¼, SE¼;
Secs. 20 to 35, inclusive.
T. 7 S., R. 8 E.,
Secs. 1 to 15, inclusive and 17 to 35, inclusive.
T. 8 S., R. 8 E.,
Secs. 1 to 15, inclusive and 17 to 35, inclusive.
T. 9 S., R. 8 E.,
Secs. 1 to 13, inclusive.
T. 5 S., R. 9 E.,
Sec. 32, lots 5 and 6;
Sec. 33, lots 5, 6, 7, and 8, S½S½;
Sec. 34, lots 3 and 4, S½SW¼.
T. 6 S., R. 9 E.,
Secs. 3 and 4;
Sec. 5, lots 1 and 2, S½N½, S½;
Sec. 6, SE¼SW¼, SE¼;
Secs. 7 to 15, inclusive;
Secs. 17 to 24, inclusive;
Sec. 25, N½N½, S½SE¼;
Secs. 26 to 35, inclusive.
T. 7 S., R. 9 E.,
Secs. 1 to 15, inclusive and 17 to 35, inclusive.
T. 8 S., R. 9 E.,
Secs. 1 to 15, inclusive and 17 to 35, inclusive.
T. 9 S., R. 9 E.,
Secs. 1 to 15, inclusive and 17 to 25, inclusive.
T. 5 S., R. 10 E.,
Sec. 25, S½;
Sec. 33, SE¼;
Sec. 34, NE¼, E½NW¼, S½;
Sec. 35.
T. 6 S., R. 10 E.,
Secs. 2 to 5, inclusive;
Sec. 6, lots 1, 2, 6, S½NE¼, E½SW¼, SE¼;
Secs. 7 to 15, inclusive and 17 to 29, inclusive;
Sec. 30, NE¼, NE¼NW¼, lots 1, 4, SE¼SW¼, SE¼;
Sec. 31, W½NE¼, NE¼NW¼, lots 1, 4, SE¼SW¼, SE¼;
Sec. 32, E½, E½NW¼;
Secs. 33, 34, and 35.
T. 7 S., R. 10 E.,
Secs. 1 to 8, inclusive;
Sec. 9, N½SE¼, N½, SW¼;
Secs. 10 to 15, inclusive and 17 to 35, inclusive.
T. 8 S., R. 10 E.,
Secs. 1 to 15, inclusive and 17 to 35, inclusive.
T. 9 S., R. 10 E.,
Secs. 1 to 15, inclusive, 17 to 30, inclusive and 32 to 35, inclusive.
T. 10 S., R. 10 E.,
Secs. 1 to 4, inclusive, 11 and 12.
T. 5 S., R. 11 E.,
Sec. 30, SW¼.
T. 6 S., R. 11 E.,
Sec. 7;
Sec. 8, W½;
Sec. 13, SE¼;
Sec. 17, NW¼, S½;
Secs. 18 and 19;
Sec. 21, S½;
Sec. 22, S½;
Secs. 23 to 35, inclusive.
T. 7 S., R. 11 E.,
Secs. 1 to 15, inclusive and 17 to 35, inclusive.
T. 8 S., R. 11 E.,
Secs. 1 to 9, inclusive, 17 to 21, inclusive, 24, 25, and 28 to 33, inclusive.
T. 9 S., R. 11 E.,
Sec. 1;
Secs. 4 to 9, inclusive, 12, 13, 17 to 21, inclusive, 24, 25, and 28 to 33, inclusive.
T. 10 S., R. 11 E.,
Sec. 1;
Sec. 12, SW¼, N½SE¼;
T. 6 S., R. 12 E.,
Sec. 13, NE¼NW¼, N½NE¼;
Sec. 14, S½NW¼;
Sec. 15. S½N½;
Sec. 17, S½NE¼, W½, SE¼;
Sec. 18, S½N½, S½;
Secs. 19, 20, 25, 29, 30, 31, 32, and 35.
T. 7 S., R. 12 E.,
Secs. 1, 12 to 15, inclusive, 22 to 27, inclusive, 34 and 35.
T. 8 S., R. 12 E.,
Sec. 1;
Sec. 2, N½;
Secs. 3, 10 to 14, inclusive;
Sec. 15, N½, SW¼;
Secs. 19, 20, and 21;
Sec. 22, NW¼, S½;
Sec. 23, NW¼, S½;
Sec. 24, NE¼, S½;
Sec. 25, N½, SE¼;
Sec. 26, N½, SW¼;
Secs. 27 to 35, inclusive.
T. 9 S., R. 12 E.,
Secs. 1 to 15, inclusive and 17 to 25, inclusive;
Sec. 26, N½;
Sec. 27 to 35, inclusive.
T. 10 S., R. 12 E.,
Sec. 1, lots 1, 2, 3, 4, SE¼NE¼, E½SE¼;
Sec. 2, lots 1, 2, 3, 4, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼, NW¼SE¼;
Secs. 3 to 12, inclusive;
Sec. 13, N½, SW¼;
Secs. 14, 15, and 17;
Sec. 18, N½.
T. 6 S., R. 13 E.
Sec. 18, SW¼;
Sec. 19, W½, SE¼;
Secs. 29 to 33, inclusive.
T. 7 S., R. 13 E.,
Secs. 3 to 9, inclusive;
Sec. 10, W½NE¼, NW¼, N½SW¼, SW¼-SW¼, NW¼SE¼;
Secs. 17 to 20, inclusive and 29 to 32, inclusive.
T. 8 S., R. 13 E.,
Sec. 4, NW¼, S½;
Secs. 5 to 15, inclusive and 17 to 35, inclusive.
T. 9 S., R. 13 E.,
Sec. 1, lots 1, 2, 3, 4, SW¼NE¼, S½NW¼, SW¼;
Secs. 2 to 11, inclusive;
Sec. 12, N½NW¼, SW¼NW¼, W½SW¼;
Sec. 14, N½, SW¼, W½SE¼;

Sec. 15;
Secs. 17 to 22, inclusive;
Sec. 23, NW¼NE¼, W½;
Sec. 26, NW¼, N½SW¼;
Sec. 27;
Sec. 28, NE¼, SW¼NW¼, S½;
Secs. 29 to 35, inclusive.
T. 10 S., R. 13 E.,
Sec. 1, lot 4;
Sec. 2, lots 1, 2, 3, 4;
Sec. 3, lots 1, 2, 3, 4, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Secs. 4 to 7, inclusive;
Sec. 8, N½, SW¼;
Sec. 9, N½, SE¼;
Sec. 10, NW¼;
Sec. 17, NE¼, N½NW¼, SE¼NW¼;
Sec. 18, N½NE¼, NE¼NW¼, lot 1;
Sec. 20, S½SW¼;
Sec. 29, NW¼, S½;
Sec. 30, S½;
Secs. 31 and 32.
T. 11 S., R. 13 E.,
Secs. 5 to 8, inclusive.
T. 8 S., R. 14 E.,
Sec. 30, W½;
Sec. 31, NE¼NW¼, lots 1 and 2.

The areas described above aggregate 634,478.27 acres.

No applications for these lands may be allowed under the homestead, small tract, desert-land, or any other nonmineral public-land laws, unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon the consideration of an application.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, and selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land and Survey Office, Boise, Idaho, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the Manager, Land and Survey Office, Boise, Idaho.

WILLIAM PINCUS,
*Acting Director.*

[F. R. Doc. 51–11103; Filed, Sept. 14, 1951; 8:45 a. m.]

# DEPARTMENT OF AGRICULTURE

## Commodity Credit Corporation

### SALES OF CERTAIN COMMODITIES AT FIXED PRICES

### SEPTEMBER DOMESTIC AND EXPORT PRICE LISTS

Pursuant to the Pricing Policy of Commodity Credit Corporation issued March 22, 1950 (15 F. R. 1583), and subject to the conditions stated therein, the following commodities are available for sale in the quantities and at the prices stated:

SEPTEMBER DOMESTIC PRICE LIST

| Commodity and approximate quantity available (subject to prior sale) | Domestic sales price |
|---|---|
| Dried whole eggs, 1950 pack (packed in barrels and drums) in carload lots only, 1,000,000 pounds.[1] | $1.03 per pound "in store" at location of stock in Illinois, Indiana, Iowa, Michigan, Ohio, Oklahoma, Texas, Kansas, Missouri, Nebraska, Minnesota, Wisconsin, New York, and Delaware ("in store" means in storage at warehouse, but with any prepaid storage and out-handling charges for the benefit of the buyer). |
| Nonfat dry milk solids, 1951 production, in carload lots only, 30,000,000 pounds. | Spray process, 15¾ cents per pound "in store" at location of stock in any State ("in store" means at the processor's plant or in storage at warehouse, but with any prepaid storage and out-handling charges for the benefit of the buyer). (See note on Ceiling Price Certification on the last page of this price list.) |
| Linseed oil, raw, 216,000,000 pounds. | Market price on date of sale. (See note on Ceiling Price Certification on the last page of this price list.) |
| Dry edible beans | On all beans, for areas other than those shown below, adjust prices upward or downward by an amount equal to the price support program differential between areas. Where no price support differential occurs, the price listed will apply.<br>For other grades of all beans, adjust by market differentials.<br>Prices listed below, on all beans, are at point of production. Amount of any paid-in freight to be added. |
| Pinto, bagged, 1,420,000 hundredweight. | No 1 grade, 1948 [1] and 1949 crops: $7.66 per 100 pounds, basis f. o. b. Denver rate area and California area; $7.26 per 100 pounds, basis f. o. b. Idaho area. |
| Pea, bagged, 810,000 hundredweight. | No. 1 grade 1948 [1], 1949 and 1950 crops: $8.33 per 100 pounds, basis f. o. b. Michigan area. |
| Red Kidney, bagged, 430,000 hundredweight. | No. 1 grade 1948 [1] and 1949 crops: $9.75 per 100 pounds, basis f. o. b. New York area. |
| Great Northern, bagged, 1,590,000 hundredweight. | No. 1 grade 1948 [1] and 1949 crops: $7.66 per 100 pounds, basis f. o. b. Twin Falls, Idaho area; $8.03 per 100 pounds, basis f. o. b. Morrill, Nebr. area. |
| Baby Lima, bagged, 615,000 hundredweight. | No. 1 grade 1948 [1] and 1949 crops: $6.86 per 100 pounds, basis f. o. b. California area. |
| Cranberry beans, bagged, 75,000 hundredweight. | No. 1 grade 1949 and 1950 crops: $9.07 per 100 pounds, basis f. o. b. California and Michigan areas. |
| Austrian winter pea seed, bagged, 2,355,000 hundredweight.[1] | $4.50 per 100 pounds, basis f. o. b. point of production; plus any paid-in freight. |
| Blue Lupine seed, bagged, 1,300,000 hundredweight. | $5 per 100 pounds, basis f. o. b. point of production; plus any paid-in freight. |
| Kobe Lespedeza seed, bagged, 5,680 hundredweight. | $13.49 per 100 pounds, basis f. o. b. point of production; plus any paid-in freight. |
| Common and Willamette Vetch seed, bagged, 200,000 hundredweight. | $7 per 100 pounds, basis f. o. b. point of production; plus any paid-in freight. |
| Alfalfa seed (Southern, certified or registered), bagged 11,800 hundredweight. | $26.81 per 100 pounds, basis f. o. b. point of production; plus any paid-in freight. |
| Red Clover seed (uncertified), bagged 49,000 hundredweight. | $37.37 per 100 pounds, basis f. o. b. point of production; plus any paid-in freight. |
| Wheat, bulk, 5,000,000 bushels | This wheat is available only when premium wheat is required or where emergency situations exist. Basis in store, the market price but in no event less than the applicable 1951 loan rate for the class, grade, quality, and location, plus: (1) 21 cents per bushel if received by truck or, (2) 16 cents per bushel if received by rail or barge. |

[1] These same lots also are available at export sales prices announced today.

SEPTEMBER DOMESTIC PRICE LIST—Continued

| Commodity and approximate quantity available (subject to prior sale) | Domestic sales price |
|---|---|
| | Examples of minimum prices, per bushel: Kansas City, No. 1 HW, Ex rail or barge, $2.61; Minneapolis, No. 1 DNS, ex rail or barge, $2.63; Chicago, No. 1 RW, ex rail or barge, $2.66. |
| | NOTE: No wheat will be for sale in the Portland, Oreg. area until further notice. |
| Oats, bulk, 7,600,000 bushels | At points of production, basis in store, the market price but not less than the applicable 1951 county loan rate plus: (1) 12 cents per bushel, if received by truck, or (2) 11 cents per bushel, if received by rail or barge, at points other, the foregoing plus average paid-in freight: |
| | Examples of minimum prices, per bushel: Chicago, No. 3 or better, ex rail or barge, 95 cents; Minneapolis, No. 3 or better, ex rail or barge, 91 cents. |
| Barley, bulk, 19,800,000 bushels | Basis in store, the market price but in no event less than the applicable 1951 loan rate for the class, grade, quality, and location, plus: (1) 19 cents per bushel if received by truck, or (2) 15 cents per bushel if received by rail or barge. |
| | Examples of minimum prices per bushel: Minneapolis, No. 1 barley, ex rail or barge, $1.47; San Francisco, No. 1 western barley, ex rail or barge, $1.52. |
| Corn, bulk, 50,000,000 bushels | 1950 commercial corn-producing area: At points of production, basis in store, the market price but not less than the applicable 1950 county loan rate for No. 3 yellow, plus 27 cents per bushel, with market differentials for other grades, quality, and classes. At other delivery points: (1) The foregoing, plus average paid-in freight, or (2) basis the following fixed minimum terminal prices, with market differentials for grade, quality, and class, and freight differentials for location. |
| | Fixed minimum prices, per bushel: Chicago, No. 3 yellow, $1.89; St. Louis, No. 3 yellow, $1.89; Minneapolis, No. 3 yellow, $1.82; Omaha, No. 3 yellow, $1.81; Kansas City, No. 3 yellow, $1.85; market differentials for other grades, quality, and classes. |
| | 1950 noncommercial corn-producing area: At points of production, or originating in a noncommercial county, basis in store, the market price but not less than 133 percent of the applicable 1950 county loan rate for No. 3, plus 27 cents per bushel; at other points, the foregoing plus average paid-in freight. If originating in a commercial county, the county loan rate for No. 3 plus 27 cents, plus average paid-in freight. |
| | Example of minimum price, per bushel: 1950 county loan rate for Brown County, Ind., $1.10 per bushel, No. 3 corn; 133 percent of $1.10, plus 27 cents equals $1.74 per bushel, the minimum sales price. |
| Flaxseed, bulk, 2,000,000 bushels | The market price on date of sale at place of delivery but not less than the following: No. 1, $3.50 per net bushel, bulk basis, in store Minneapolis. For other markets and other grades, adjust by market differentials. |

*Ceiling Price Certification:* Any purchaser from CCC of nonfat dry milk solids, or raw linseed oil, must be able and will be required to certify that the price paid to CCC does not exceed the highest ceiling price he could pay any of his usual supplies for the commodity in the quantity and at the place and season that delivery is made.

SEPTEMBER EXPORT PRICE LIST

| Commodity and approximate quantity available (subject to prior sale) | Export sales price |
|---|---|
| Dried whole eggs: 1950 pack (packed in barrels and drums) in carload lots only, 10,000,000 pounds. | (1) 40 cents per pound f. a. s. vessel any U. S. Gulf or East Coast port; or (2) 40 cents per pound "in store" at location of stock, less freight based on the average gross shipping weight calculated at the lowest export freight rate ("in store" means in storage at warehouse, but with any prepaid storage and outhandling charges for the benefit of the buyer.) |
| Dry edible beans | No. 1 Grade 1948 crop, f. a. s. vessel at locations shown below: |
| Pinto, bagged, 595,000 hundredweight.[1] | $4.90 per 100 pounds, San Francisco Bay area and Portland, Oreg.; $5 per 100 pounds, U. S. Gulf ports (see note below). |
| Pea, bagged, 115,000 hundredweight.[1 2] | For export to Western Hemisphere countries—$6.50 per 100 pounds, East Coast ports. For export to other than Western Hemisphere countries—$5.50 per 100 pounds, East Coast ports. |
| Great Northern, bagged, 581,000 hundredweight.[1 2] | $6.50 per 100 pounds, Portland, Oreg. (26,000 hundredweight only stored at The Dalles, Oreg.); $6.60 per 100 pounds, U. S. Gulf ports (see note below). |
| Baby Lima, bagged, 90,000 hundredweight.[1] | $5 per 100 pounds, San Francisco Bay area. |
| Red Kidney, bagged, 330,000 hundredweight.[1 2] | $6.50 per 100 pounds, New York. |
| | NOTE: "U. S. Gulf ports" means ports with freight rates not greater than to New Orleans. Any excess freight will be for account of the buyer. |
| | Discounts for grades on all beans: No. 2, 25 cents less than No. 1; No. 3, 50 cents less than No. 1; appropriate discounts will also be given for "off-color" beans. |
| | At CCC's option, 1949 crop beans may be furnished in place of 1948 beans in instances where stocks of 1948 beans of the type and grade desired are exhausted. |
| Austrian winter pea seed, bagged, 2,355,000 hundredweight.[1] | Market price on date of sale at place of delivery, provided delivery takes place within 15 days unless otherwise agreed upon. |

[1] These same lots also are available at domestic sales prices announced today.

[2] *Ceiling Price Certification.* Any purchaser from CCC of Red Kidney beans or Great Northern beans for export, or of Pea beans for export to Western Hemisphere countries, must be able and will be required to certify that the price paid to CCC does not exceed the highest ceiling price he could pay any of his usual suppliers for the commodity in the quantity and at the place and season that delivery is made.

(Pub. Law 439, 81st Cong.)

Issued: September 11, 1951.

[SEAL]

HAROLD K. HILL,
*Acting President,*
*Commodity Credit Corporation.*

[F. R. Doc. 51–11124; Filed, Sept. 14, 1951; 8:49 a. m.]

## FEDERAL DEPOSIT INSURANCE CORPORATION

### SUMMARY OF DEPOSITS

### ORDER FOR REPORT

Pursuant to the provisions of sections 9 and 10 (e) of the Federal Deposit Insurance Act: *It is ordered,* That each insured bank shall submit to the Federal Deposit Insurance Corporation on or before October 1, 1951, a report of its deposits as of the close of business September 19, 1951, on Form 89—Call No. 6, entitled "Summary of Deposits"[1] and said report shall be prepared in accordance with "Instructions for Preparation of Summary of Deposits, Form 89—Call No. 6[1] at the close of business on September 19, 1951."

[1] Filed as part of the original document.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
*Secretary.*

[F. R. Doc. 51–11157; Filed, Sept. 14, 1951; 8:51 a. m.]

## DEPARTMENT OF COMMERCE

### Federal Maritime Board

[Docket No. M–36]

MISSISSIPPI SHIPPING CO., INC.

NOTICE OF HEARING ON APPLICATION TO BAREBOAT CHARTER A GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR EMPLOYMENT IN SERVICE BETWEEN THE GULF AND EAST COAST OF SOUTH AMERICA

Pursuant to section 3, Public Law 591, 81st Congress, notice is hereby given that a hearing in this proceeding will be held at Washington, D. C., on September 18, 1951, at 10 o'clock a. m., in the foyer of the auditorium, first floor of the Department of Commerce Building, before Examiner C. W. Robinson, upon the application of Mississippi Shipping Company, Inc., to bareboat charter a Government-owned, war-built, dry-cargo C–1A type vessel for employment in its service between United States Gulf ports and ports on the East coast of South America.

The purpose of the hearing is to receive evidence with respect to whether the service for which such vessel is proposed to be chartered is required in the public interest and would not be adequately served without the use therein of such vessel, and with respect to the availability of privately-owned American-flag vessels for charter on reasonable conditions and at reasonable rates for use in such service. Evidence also will be received with respect to any restrictions or conditions that may, under the statute, be included in the charter if the application should be granted.

All persons having an interest in the application will be given an opportunity to be heard if present.

The parties may have oral argument before the examiner immediately following the close of the hearing, in lieu of briefs, and the examiner will issue a recommended decision. Parties may have seven (7) days within which to file exceptions to, or memoranda in support of, the examiner's recommended decision, but the Board reserves the right to determine whether oral argument on exceptions will be granted and whether briefs in connection therewith will be received.

Dated: September 7, 1951.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS,
*Secretary.*

[F. R. Doc. 51–11131; Filed, Sept. 14, 1951; 8:51 a. m.]

[Docket No. M-37]

LYKES BROS. STEAMSHIP CO., INC.

NOTICE OF HEARING ON APPLICATION TO BAREBOAT CHARTER A GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR EMPLOYMENT IN SERVICE BETWEEN THE GULF AND SOUTH AND EAST AFRICA

Pursuant to section 3, Public Law 591, 81st Congress, notice is hereby given that a hearing will be held in this proceeding at Washington, D. C., on September 25, 1951, at 10 o'clock a. m., in Room 4821, Department of Commerce Building, before Examiner Robert Furness, upon the application of Lykes Bros. Steamship Co., Inc., to bareboat charter one Victory type vessel for employment in the subsidized service between United States Gulf ports and ports in South and East Africa (Trade Route No. 15-B, Line "E").

The purpose of the hearing is to receive evidence with respect to whether the service for which such vessel is proposed to be chartered is required in the public interest and would not be adequately served without the use therein of such vessel, and with respect to the availability of privately-owned American-flag vessels for charter on reasonable conditions and at reasonable rates for use in such service. Evidence offered with respect to any restrictions or conditions that may under the statute be included in the charter if the application should be granted also will be received.

All persons having an interest in the application will be given an opportunity to be heard if present.

The parties may have oral argument before the examiner immediately following the close of the hearing, in lieu of briefs, and the examiner will issue a recommended decision. Parties may have seven (7) days within which to file exceptions to, or memoranda in support of, the examiner's recommended decision, but the Board reserves the right to determine whether oral argument on exceptions will be granted and whether briefs in connection therewith will be received.

Dated: September 7, 1951.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS, *Secretary.*

[F. R. Doc. 51-11130; Filed, Sept. 14, 1951; 8:50 a. m.]

## CIVIL AERONAUTICS BOARD

[Docket No. 2888 et al.]

AEROVIAS SUD AMERICANA, INC. AND SKYTRAIN AIRWAYS, INC.; LATIN AMERICAN AIR FREIGHT CASE

NOTICE OF ORAL ARGUMENT

In the matter of the applications of Aerovias Sud Americana, Inc., and Skytrain Airways, Inc., as amended, pursuant to section 401 of the Civil Aeronautics Act of 1938, as amended, for certificates of public convenience and necessity authorizing overseas and foreign air transportation of property only between Houston, Tex., New Orleans, La., St. Petersburg-Tampa and Miami, Fla., on the one hand, and certain designated points in the Caribbean, Central and South American areas on the other.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, particularly sections 205 and 1001 of said act, that oral argument in the above-entitled proceeding is assigned to be held on September 27, 1951, at 10:00 a. m., e. d. s. t., in Room 5042, Commerce Building, Fourteenth Street and Constitution Avenue, NW., Washington, D. C., before the Board.

Dated at Washington, D. C., September 11, 1951.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN, *Secretary.*

[F. R. Doc. 51-11161; Filed, Sept. 14, 1951; 8:51 a. m.]

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[Docket No. 3901]

CARIBBEAN AMERICAN LINES, INC.; EXEMPTION APPLICATION

NOTICE OF HEARING

In the matter of the application of Caribbean American Lines, Inc., for an exemption filed pursuant to § 291.16 of the Board's Economic Regulations and section 416 (b) of the Civil Aeronautics Act of 1938, as amended.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a) and 1001 of said act that a hearing in the above-entitled proceeding is assigned to be held on October 1, 1951, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner J. Earl Cox.

Without limiting the scope of the issues presented by the application, particular attention will be directed to the following matters and questions:

1. Is the enforcement of the requirements of Title IV of the Civil Aeronautics Act, as amended, or any provision thereof, or any rule, regulation, term, condition or limitation prescribed thereunder, as it affects Caribbean American Lines, Inc., an undue burden on that air carrier by reason of the limited extent of, or unusual circumstances affecting the operation of such carrier and not in the public interest?

2. Will the operation of the air service proposed by the applicant meet the statutory standards of section 416 (b) of the act and the tests set forth in an opinion of the Board issued May 25, 1950, in the matter of the applications for individual exemptions filed by Large Irregular Air Carriers as modified by the Board's announcement of March 2, 1951, with respect to Puerto Rico?

3. Do the past operations of the applicant indicate that it should be entrusted with the authorization requested? If so and if the applicant seeks authorization to operate beyond the limits heretofore prescribed by the Board, is there a need for such air transportation?

For further details as to issues, reference may be had to the application, the Examiner's Prehearing Conference Report and all other matters of record in this proceeding.

Notice is further given that any person, other than parties of record, desiring to be heard in opposition to the application must file with the Board on or before October 1, 1951, a statement setting forth the issues of fact or law which he desires to controvert and such person then may appear and participate at the hearing.

Dated at Washington, D. C., September 11, 1951.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN, *Secretary.*

[F. R. Doc. 51-11159; Filed, Sept. 14, 1951; 8:51 a. m.]

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[Docket No. 4850 et al.]

BOHRER AIR FREIGHT CO. ET AL.

NOTICE OF POSTPONEMENT OF HEARING

In the matter of the complaint of Bohrer Air Freight Co., and Airport Package Service, Inc., with respect to the proposed change in Rule No. 6.3 on 3d Revised Page 18-B of Agent Emery F. Johnson's Official Airfreight Rules Tariff No. 1, C. A. B. No. 1, and in the matter of the approval of an agreement between American Airlines, Inc., and certain other carriers, providing for the proposed change in rules which would effect the elimination of advance charges to certain local cartage operators.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, that hearing in the above-entitled proceeding now assigned to be held on September 17, 1951, has been postponed and will be held on October 22, 1951, at 10:00 a. m., e. s. t., in Room 5855, Commerce Building, Fourteenth and Constitution Avenue NW., Washington, D. C., before Examiner J. Earl Cox.

The issues remain as outlined in the original notice.

Dated at Washington, D. C., September 11, 1951.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN, *Secretary.*

[F. R. Doc. 51-11160; Filed, Sept. 14, 1951; 8:51 a. m.]

## DEFENSE MATERIALS PROCUREMENT AGENCY

DELEGATION OF AUTHORITY TO CERTAIN OFFICERS AND AGENCIES UNDER DEFENSE PRODUCTION ACT OF 1950, AS AMENDED

Pursuant to the Defense Production Act of 1950, as amended (Public Law 774, 81st Congress and Public Laws 69 and 96, 82d Congress), Executive Order 10161 of September 9, 1950 (15 F. R. 6105) and 10200 of January 3, 1951 (16 F. R. 61), as amended or modified, and Executive

Order No. 10281 of August 28, 1951 (16 F. R. 8789), pending organizational implementation of those orders, and to assure uninterrupted performance of the functions conferred upon me or the Defense Materials Procurement Agency by those orders, certain of those functions are delegated as follows:

1. Of the functions so conferred upon me, there are delegated, to each officer and agency performing, as of September 12, 1951, functions pursuant to Executive Orders 10161 of September 9, 1950, and 10200 of January 3, 1951, the functions under Executive Orders 10161 of September 9, 1950 and 10200 of January 3, 1951, as amended or modified, and Executive Order 10281 of August 28, 1951, which are the same as or substantially similar to those functions performed as of September 12, 1951, except that recommendations for the issuance of certificates with respect to metals and minerals under sections 302 and 303 of the Act (loans, purchases, commitments, etc.) and section 124A of the Internal Revenue Code, as amended by section 216 of the Revenue Act of 1950, approved September 23, 1950 (accelerated amortization), shall be prepared as heretofore by the Defense Minerals Administration in the Department of the Interior and transmitted to the Defense Materials Procurement Administrator for review and submission to the Defense Production Administrator.

2. The functions herein delegated may be redelegated with or without authority for further redelegation, and redelegations in effect on the date hereof shall continue in effect until rescinded or modified by appropriate authority.

3. All rules, regulations, policies, procedures, and directives applicable to the performance of the functions herein delegated, in effect on September 12, 1951, and not inconsistent with the foregoing Executive orders shall remain in full force and effect until modified or superseded.

4. The functions delegated by the preceding paragraphs of this Delegation of Authority or redelegated by, or by authority of, the delegates hereunder shall be exercised subject to the direction and control of the Defense Materials Procurement Administrator.

This delegation shall take effect as of the date hereof.

Dated: September 14, 1951.

JESS LARSON,
*Defense Materials Procurement Administrator.*

[F. R. Doc. 51-11251; Filed, Sept. 14, 1951; 11:09 a. m.]

## FEDERAL POWER COMMISSION

[Docket No. G-1440]

LOUISIANA NEVADA TRANSIT CO.

NOTICE OF FINDINGS AND ORDER

SEPTEMBER 11, 1951.

Notice is hereby given that, on September 7, 1951, the Federal Power Commission issued its order, entered September 6, 1951, modifying certificate of public convenience and necessity, in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11105; Filed, Sept. 14, 1951; 8:45 a. m.]

[Docket No. G-1667]

UNITED FUEL GAS CO.

NOTICE OF FINDINGS AND ORDER

SEPTEMBER 11, 1951.

Notice is hereby given that, on September 7, 1951, the Federal Power Commission issued its order, entered September 6, 1951, issuing a certificate of public convenience and necessity, in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11106; Filed, Sept. 14, 1951; 8:45 a. m.]

[Docket No. G-1675]

IROQUOIS GAS CORP.

NOTICE OF FINDINGS AND ORDER

SEPTEMBER 11, 1951.

Notice is hereby given that, on September 7, 1951, the Federal Power Commission issued its order, entered September 6, 1051, issuing certificate of public convenience and necessity, in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11107; Filed, Sept. 14, 1951; 8:46 a. m.]

[Docket No. G-1692, G-1706]

SOUTHERN CALIFORNIA GAS CO. ET AL.

NOTICE OF FINDINGS AND ORDER

SEPTEMBER 11, 1951.

In the matters of Southern California Gas Company and Southern Counties Gas Company of California, Docket No. G-1692; and El Paso Natural Gas Company, Docket No. G-1706.

Notice is hereby given that, on September 7, 1951, the Federal Power Commission issued its order, entered September 6, 1951, issuing certificate of public convenience and necessity in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11108; Filed, Sept. 14, 1951; 8:46 a. m.]

[Docket No. G-1709]

PACIFIC GAS AND ELECTRIC CO.

NOTICE OF FINDINGS AND ORDER

SEPTEMBER 11, 1951.

Notice is hereby given that, on September 7, 1951, the Federal Power Commission issued its order, entered September 6, 1951, issuing certificate of public convenience and necessity, in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11109; Filed, Sept. 14, 1951; 8:46 a. m.]

[Docket No. G-1726]

OHIO FUEL GAS CO.

NOTICE OF FINDINGS AND ORDER

SEPTEMBER 11, 1951.

Notice is hereby given that, on September 7, 1951, the Federal Power Commission issued its order, entered September 6, 1951, issuing certificate of public convenience and necessity and permitting abandonment of facilities, in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11111; Filed, Sept. 14, 1951; 8:47 a. m.]

[Docket Nos. G-1729, G-1730]

EL PASO NATURAL GAS CO.

NOTICE OF FINDINGS AND ORDER

SEPTEMBER 11, 1951.

Notice is hereby given that, on September 6, 1951, the Federal Power Commission issued its order, entered September 5, 1951, issuing a certificate of public convenience and necessity in Docket No. G-1729 and dismissing application in Docket No. G-1730, in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11113; Filed, Sept. 14, 1951; 8:47 a. m.]

[Docket No. G-1731]

REPUBLIC LIGHT, HEAT AND POWER CO., INC.

NOTICE OF FINDINGS AND ORDER

SEPTEMBER 11, 1951.

Notice is hereby given that, on September 7, 1951, the Federal Power Commission issued its order, entered September 6, 1951, issuing certificate of public convenience and necessity, in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11110; Filed, Sept. 14, 1951; 8:46 a. m.]

[Docket No. G-1733]

SOUTHERN NATURAL GAS CO.

NOTICE OF FINDINGS AND ORDER

SEPTEMBER 11, 1951.

Notice is hereby given that, on September 7, 1951, the Federal Power

Commission issued its order, entered September 6, 1951, permitting and approving abandonment and issuing certificate of public convenience and necessity, in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11112; Filed, Sept. 14, 1951; 8:47 a. m.]

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[Docket No. G-1775]

GEORGIA GAS CO.

NOTICE OF APPLICATION

SEPTEMBER 10, 1951.

Take notice that on August 23, 1951, the Georgia Gas Company (Applicant), a Georgia corporation having its principal place of business in the City of Gainesville, Georgia, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of certain natural-gas transmission pipeline facilities hereinafter described.

Applicant seeks authorization to construct and operate a 4½-inch O. D. natural-gas pipeline approximately 32 miles in length from Transcontinental Gas Pipe Line Corporation's existing line at a point just south-west of Bogart, Georgia in Clarke County, where delivery will be taken at the metering station provided by Transcontinental at this point to a town border station just east of Gainesville, Georgia, in Hall County where Applicant's line will be connected with the distribution system of Georgia Gas Company now serving the City of Gainesville, Georgia.

The estimated cost of the proposed construction approximates $400,000 which the company proposed to finance in part by the issuance of first mortgage bonds.

The application is on file with the Commission for public inspection. Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) before the 29th day of September 1951.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11104; Filed, Sept. 14, 1951; 8:45 a. m.]

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[Project No. 2016]

CITY OF TACOMA, WASHINGTON

ORDER GRANTING ORAL ARGUMENT

SEPTEMBER 7, 1951.

Pursuant to the provisions of § 1.31 of the Commission's rules of practice and procedure (18 CFR. 1.31), the City of Tacoma, Washington, applicant for license for Project No. 2016, filed on September 4, 1951, its exceptions to the Recommended Decision of the Presiding Examiner issued July 23, 1951, denying the City's application for license. The Attorney General of the State of Washington, the Washington State Departments of Fisheries and Game and the Washington State Sportsmen's Council Inc., interveners, and Commission staff counsel also filed exceptions to the Recommended Decision.

On August 1, 1951, the City requested an extension of time for filing exceptions (which request was granted) and on that date the City also requested oral argument before the Commision on the questions presented by the exceptions.

The Commission finds: It is appropriate and consistent with the public interest to grant oral argument in support of the respective exceptions filed in this matter.

The Commission orders: Oral argument in the above-mentioned matter be had before the Commission on October 31st, 1951, at 10:00 a. m. (e. s. t.), in the Hearing Room of the Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., the scope and content of the argument to be as provided by the aforesaid § 1.31.

Date of issuance: September 11, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
*Secretary.*

[F. R. Doc. 51-11114; Filed, Sept. 14, 1951; 8:47 a. m.]

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## FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 8736, 8975, 8976, 9175]

TELEVISION BROADCAST SERVICE

THIRD ADDENDUM TO NOTICE OF ORDER OF TESTIMONY

In the matters of amendment of § 3.606 of the Commission's rules and regulations, Docket Nos. 8736 and 8975; amendment of the Commission's rules, regulations and Engineering Standards concerning the Television Broadcast Service, Docket No. 9175; utilization of frequencies in the Band 470 to 890 Mcs. for Television Broadcasting, Docket No. 8976.

1. This addendum supplements and corrects the notice of order of testimony issued by the Commission on July 18, 1951 (Mimeo 66241).

2. The following additional corrections should be made:

(a) The comment of Chanticleer Broadcasting Company, New Brunswick, New Jersey, listed as a counterproposal in Group D, page 8, should be listed as in support of the Commission's proposed assignment for New Brunswick, New Jersey.

(b) Add to Group I, page 16, the following opposition to the comment of Ohio State University relating to Huntington, West Virginia:

KE 189 Ashland Broadcasting Company, Ashland, Kentucky.

(c) The reference to Spartanburg Broadcasting Company, Spartanburg, South Carolina, listed in Group L, page 21, as supporting the Commission's proposed assignment for Middlesboro, Kentucky, should be deleted.

(d) The College of St. Thomas, St. Paul, Minnesota, which had filed a comment relating to Minneapolis-St. Paul, Minnesota, listed in Group T, page 35, has requested that its comment be withdrawn. The above mentioned comment listed in Group T, page 35, should be deleted.

(e) The opposition of Havens & Martin, Inc., Richmond, Virginia (K 137) listed on page 6 of Mimeo 66048, should also be listed in Mimeo 66026 as in opposition to the comment filed by Allen B. DuMont Laboratories, Inc.

(f) The Joint Opposition of Logansport Broadcasting Corporation and Owensboro On the Air, Inc., should be added to Mimeo 66048 and is designated as K 340. The opposition opposes the following comments: The William H. Block Company; WIBC, Inc.; Twin Valley Broadcasters, Inc.; Michigan State College; WJR, The Goodwill Station; L. B. Wilson, Inc.; Quad-City Broadcasting Corporation; Southern Illinois University and Allen B. DuMont Laboratories, Inc. The opposition of Logansport Broadcasting Corporation and Owensboro On the Air, Inc., should be added to Mimeo 66188 in all places where the aforesaid comments are listed. The Logansport Broadcasting Corporation and Owensboro On the Air, Inc., should also be added to Mimeo 66026 as in opposition to comments filed by Allen B. DuMont Laboratories, Inc.

3. Any additional errors or omissions in the order of testimony as corrected above should be reported in writing to the Chief, Rules and Standards Division of the Broadcast Bureau of the Commission at the earliest practicable date.

Adopted: September 6, 1951.

Released: September 7, 1951.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
*Secretary.*

[F. R. Doc. 51-11154; Filed, Sept. 14, 1951; 8:51 a. m.]

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[Docket No. 9883]

NEWTON Z. WOLPERT

ORDER CONTINUING HEARING

In re application of Newton Z. Wolpert, St. Paul, Minnesota, for modification of license; Docket No. 9883, File No. 420-C2-ML-51.

The Commission having under consideration a petition filed by the applicant, Newton Z. Wolpert, on September 6, 1951, requesting an indefinite continuance of the hearing presently scheduled for September 10, 1951, pending consideration by the Commission of the applicant's petition for removal from hearing; and

It appearing that Commission Counsel has consented to immediate consideration of this petition and therefore the requirements of § 1.745 of the Commission's rules have been met;

*It is ordered*, This 7th day of September 1951, that the petition be granted and the hearing presently scheduled for

September 10, 1951 be continued indefinitely.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
*Secretary.*

[F. R. Doc. 51-11155; Filed, Sept. 14, 1951; 8:51 a. m.]

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[Docket No. 9918, 9919]

STATION KFST AND BIG STATE BROADCASTING CORP. (KTXC)

ORDER DESIGNATING APPLICATION FOR CONSOLIDATED HEARING ON STATED ISSUES

In the matter of revocation of construction permit of Station KFST, Fort Stockton, Texas, Docket No. 9919; and in re the application of Big State Broadcasting Corporation (KTXC), Big Spring, Texas, for renewal of license; Docket No. 9918, File No. BR-2332.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 6th day of September 1951;

The Commission having under consideration a petition filed April 16, 1951, by Fort Stockton Broadcasting Company, permittee of Station KFST, Fort Stockton, Texas, requesting the consolidation of the above-entitled proceeding relating to the revocation of construction permit of Station KFST, Fort Stockton, Texas, with the above-entitled hearing on the application of Big State Broadcasting Corporation for renewal of license of Station KTXC, Big Spring, Texas;

It appearing, that the application of Big State Broadcasting Corporation for renewal of license of Station KTXC, Big Spring, Texas, was designated for hearing to be held at Big Spring, Texas, on May 14, 1951, and;

It further appearing, that the Commission, on April 25, 1951, designated the renewal application of Station KTXC for hearing on July 16, 1951, at Big Springs, Texas, in a consolidated proceeding with the application of Leonard R. Lyon for a permit to construct a new standard broadcast station to operate on the frequency 1490 kc, with 100 w power, daytime only, at El Reno, Oklahoma, and;

It further appearing, that the Commission, on June 8, 1951, dismissed without prejudice the aforementioned application of Leonard R. Lyon for construction permit, and;

It further appearing, that grant of the request for a consolidation would conduce to the orderly dispatch of the Commission's business;

*It is ordered*, That the above-entitled petition of Fort Stockton Broadcasting Company is granted and the proceedings for revocation of construction permit of Station KFST is designated for hearing in a consolidated proceeding with the application of Big State Broadcasting Corporation for renewal of license of Station KTXC, Big Spring, Texas, at a time and place to be specified by subsequent order of the Commission, upon the issues as set forth in the Commission orders of March 14, 1951.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
*Secretary.*

[F. R. Doc. 51-11153; Filed, Sept. 14, 1951; 8:51 a. m.]

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[Docket No. 10028]

WALDO HAGGBERG BRAZIL

ORDER CONTINUING HEARING

In re application of Waldo Haggberg Brazil, Grandview, Missouri, for construction permit; Docket No. 10028, File No. BP-7989.

The Commission having under consideration a petition filed August 28, 1951, by Waldo Haggberg Brazil, Grandview, Missouri, requesting a continuance of the hearing presently scheduled for September 19, 1951, at Washington, D. C., in the proceeding upon his above-entitled application for construction permit; and

It appearing, that no opposition to the granting of the instant petition has been filed with the Commision;

*It is ordered*, This 7th day of September, 1951, that the petition is granted; and that the hearing in the above-entitled proceeding is continued to 10:00 a. m., Thursday, November 1, 1951, at Washington, D. C.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
*Secretary.*

[F. R. Doc. 51-11156; Filed, Sept. 14, 1951; 8:51 a. m.]

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## SECURITIES AND EXCHANGE COMMISSION

[File Nos. 7-1327-7-1329]

WESTINGHOUSE AIRBREAK CO. ET AL.

NOTICE OF APPLICATION FOR UNLISTED TRADING PRIVILEGES, AND OF OPPORTUNITY FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 11th day of September A. D. 1951.

The Philadelphia-Baltimore Stock Exchange, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934 and Rule X-12F-1 thereunder, has made application for unlisted trading privileges in the Common Stock, $10 Par Value, of Westinghouse Air Brake Company; the Common Stock, $10 Par Value, of American Cyanamid Company; and the Common Stock, 50¢ Par Value, of Merck and Company, Inc., securities listed and registered on the New York Stock Exchange.

Rule X-12F-1 provides that the applicant shall furnish a copy of the application to the issuer and to every exchange on which the security is listed or already admitted to unlisted trading privileges. The application is available for public inspection at the Commission's principal office in Washington, D. C.

Notice is hereby given that, upon request of any interested person received prior to October 2, 1951, the Commission will set this matter down for hearing. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application, and other information contained in the official file of the Commission pertaining to this matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
*Secretary.*

[F. R. Doc. 51-11120; Filed, Sept. 14, 1951; 8:49 a. m.]

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[File No. 70-2683]

COLUMBIA GAS SYSTEM, INC. AND MANUFACTURERS LIGHT AND HEAT CO.

ORDER AUTHORIZING ISSUANCE AND SALE OF PRINCIPAL AMOUNT 3¼ PERCENT NOTES TO PARENT COMPANY BY SUBSIDIARY

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 11th day of September A. D. 1951.

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and one of its subsidiary companies, The Manufacturers Light and Heat Company ("Manufacturers"), having filed with this Commission a joint application pursuant to sections 6 (b), 9 and 10 of the Public Utility Holding Company Act of 1935 regarding the following transactions:

Manufacturers proposes to issue and sell and Columbia proposes to acquire, from time to time prior to March 31, 1952, not to exceed $9,296,000 principal amount of Manufacturers' unsecured Installment Promissory Notes. (An amendment filed by the joint applicants reduced the principal amount of Notes to be issued by Manufacturers from $11,000,000 to $9,296,000.) Said Notes would be registered and the principal amounts thereof are to be payable in twenty-five equal annual installments on February 15 of each of the years 1953 to 1977, inclusive. The unpaid principal amounts of said notes would bear interest at the rate of 3¼ percent per annum, payable semi-annually on February 15 and August 15 of each year during the time the Notes are outstanding. The proceeds from the sale of said Notes would be used by Manufacturers to finance a part of its proposed 1951 construction program.

Said joint application having been filed on August 6, 1951 and an amendment having been filed on September 7, 1951, and notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to the Act and the Commission not having received a request for a hearing with respect to said joint application within the period specified in said notice

or otherwise, and not having ordered a hearing thereon; and

The joint application having represented that the only State Commission having jurisdiction over the proposed issuance and sale of the said Notes by Manufacturers is the Pennsylvania Public Utility Commission and that Commission having authorized the issuance and sale of such Notes, and the joint applicants having requested that the Commission's order herein with respect to said joint application be granted, effective forthwith; and

The Commission finding with respect to the joint application, as amended, that the applicable provisions of the act and rules promulgated thereunder are satisfied and that no adverse findings are necessary, and deeming it appropriate in the public interest and in the interest of investors and consumers that said joint application, as amended, be granted, effective forthwith, subject to the terms and conditions specified below:

*It is ordered*, Pursuant to Rule U-23 and the applicable provisions of the Public Utility Holding Company Act of 1935 that said joint application, as amended, be, and the same hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
*Secretary.*

[F. R. Doc. 51-11119; Filed, Sept. 14, 1951; 8:49 a. m.]

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[File No. 70-2687]

OHIO EDISON CO.

ORDER PERMITTING SALE OF UTILITY ASSETS

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 11th day of September 1951.

Ohio Edison Company ("Ohio Edison"), a registered holding company and a public utility company, having filed a declaration, pursuant to section 12 (d) of the Public Utility Holding Company Act of 1935 (the "act") and Rule U-44 promulgated thereunder, with respect to the following proposed transaction:

Ohio Edison proposes to sell to Dayton Power & Light Co. ("Dayton"), a nonaffiliated electric utility company, a portion of a certain 34,500 volt electric transmission line, right of way and related facilities, extending from the North Clark County line in Ohio to Waynesfield, Ohio. Said transmission line has heretofore been used by Ohio Edison solely for the purpose of supplying energy to Dayton and is located within an area served by Dayton. Said transmission line is stated to be unnecessary to the operation of Ohio Edison's business but useful in Dayton's business.

The purchase price to be paid for said property will be $268,326, in cash, which is stated to represent the reproduction cost new, less observed depreciation. Said reproduction cost new is stated to have been unanimously agreed upon by representatives of the contracting parties and a designee of the Public Utilities Commission of Ohio. The estimated original cost of said property as recorded on Ohio Edison's books, as at June 30, 1951, was $171,587, and the estimated depreciation reserve applicable thereto was $72,115.

It is further stated that the expenses to be incurred in connection with the proposed transaction will be approximately $5,092, including payments of $3,210 to Messrs. Jensen, Bowen and Farrell for appraisal services, $250 to Commonwealth Services Inc. for services in connection with the release of the property from the lien of Ohio Edison's mortgage and $1,000 to Messrs. Winthrop, Stimson, Putnam & Roberts for legal services. After deduction of the foregoing expenses and Federal capital gains tax estimated at $45,750, Ohio Edison estimates it will realize a profit of $121,747 by the sale of the property and it proposes to credit this amount to earned surplus.

The proposed transaction has been approved by the Public Utilities Commission of Ohio.

Appropriate notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act, and the Commission not having received a request for hearing with respect to said declaration within the period specified, or otherwise, and not having ordered a hearing thereon; and

The Commission finding with respect to said declaration that the requirements of the applicable provisions of the act and rules thereunder are satisfied, that no adverse findings are necessary thereunder, and deeming it appropriate in the public interest and in the interests of investors and consumers that the said declaration be permitted to become effective forthwith:

*It is hereby ordered*, Pursuant to said Rule U-23 and the applicable provisions of said act, that said declaration be, and the same hereby is permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
*Secretary.*

[F. R. Doc. 51-11118; Filed, Sept. 14, 1951; 8:49 a. m.]

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[File No. 812-742]

EQUITY CORP. ET AL.

NOTICE OF APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 11th day of September A. D. 1951.

In the matter of the Equity Corporation, Bankers Security Life Insurance Society, and William R. Shipway; File No. 812-742.

Notice is hereby given that Bankers Security Life Insurance Society (Society), 103 Park Avenue, New York, New York, has filed an application pursuant to section 17 (b) of the Investment Company Act of 1940 for an order of the Commission granting an exemption from the provisions of section 17 (a) (3) of the act so as to permit William R. Shipway (Shipway) to borrow money on a mortgage from Society in the proposed transaction hereinafter set forth.

The Equity Corporation (Equity), a registered investment company, controls Security and the Industrial Bank of Commerce, 56 East 42nd Street, New York, New York. Shipway is a vice-president of Industrial Bank of Commerce. Under these circumstances, Shipway is an affiliated person of an affiliated person of Equity and under the provisions of section 17 (a) (3) it is unlawful for him to borrow money from Security, which is controlled by Equity, unless an exemption is granted by the Commission pursuant to the authority vested in it by section 17 (b) of the act.

Shipway borrowed $6,800 at 4 percent interest from Security in 1945 secured by a mortgage on residential property owned by him, known as 93 Union Avenue, Lynbrook, Long Island, New York. Installment payments of principal and interest have reduced the mortgage debt to approximately $3,230. Shipway desires to borrow and Security proposes to lend, subject to the granting of exemption requested, an additional $5,000 at 4½ percent interest, making a total of approximately $8,300, to be repaid in monthly installments of $86.07 over a period of approximately 10 years. The new advance will be represented by the mortgagor's bond and secured by mortgage on the subject property and said bond and mortgage will be consolidated with the existing mortgage debt by written instrument duly recorded. The mortgaged property was appraised for mortgage purposes on August 10, 1951 at $18,099. Security is authorized by section 81 of the New York Insurance Law to invest its reserves in mortgage loans, subject to limitations not pertinent here. The making of such loans to individuals secured by mortgages on approved residential property constitutes a portion of the regular business of Security.

For a more detailed statement of the matters of fact and law asserted, all interested persons are referred to said application which is on file in the office of the Commission in Washington, D. C.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after September 27, 1951, unless prior thereto a hearing upon the application is ordered by the Commission as provided in Rule N-5 of the rules and regulations promulgated under the act. Any interested person may, not later than September 25, 1951, at 5:30 p. m., e. d. s. t. submit to the Commission in writing his views or any additional facts bearing upon this application or the desirability of a hearing thereon, or request in writing that the Commission order a hearing be held thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C., and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact or

law raised by the application which he desires to controvert.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 51-11116; Filed, Sept. 14, 1951; 8:48 a. m.]

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[File No. 812-743]

EQUITY CORP. ET AL.

NOTICE OF APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 11th day of September A. D. 1951.

In the matter of The Equity Corporation, Bankers Security Life Insurance Society, Joseph P. Christianson; File No. 812-743.

Notice is hereby given that Bankers Security Life Insurance Society (Society), 103 Park Avenue, New York, New York, has filed an application pursuant to section 17 (b) of the Investment Company Act of 1940 for an order of the Commission exempting from the provisions of section 17 (a) of the act a proposed transaction in which Joseph P. Christianson (Christianson) has agreed, subject to the granting of the exemption requested, to purchase approximately 13 acres of unimproved land, situated in the towns of Ossining and Mt. Pleasant, Westchester County, New York, from Society for a total consideration of $10,000, $2,000 of which is to be paid in cash and Society will take back a purchase money mortgage of $8,000 at 4½ percent interest to be discharged within four years by 48 consecutive monthly payments of $182.43 each.

Society is controlled by The Equity Corporation (Equity), a registered investment company, and Christianson, an officer of Equity, is an affiliated person of Equity within the meaning of section 2 (a) (3) of the act. Since Christianson is an affiliated person of Equity and Society is controlled by Equity, Christianson may not consummate the proposed transaction by reason of the provisions of section 17 (a) of the act, unless the Commission grants the exemption requested pursuant to the authority vested in it by section 17 (b) of the act.

The application discloses that in 1929 Society acquired a bond and the related mortgage on the subject property, then consisting of approximately 14 acres of land, for $18,650, the unpaid balance of said mortgage. The mortgage loan was reduced to $16,650 by principal payments made in 1930 and 1931. Society acquired the land in 1933 by deed of trust in lieu of foreclosure. In 1936, one acre was sold for $3,000 and the remaining acreage was written down to $4,640. In 1937, Society sold the subject land for $20,000, receiving $2,000 in cash and taking back a purchase money mortgage for $18,000 with interest at 4% per annum. Said mortgage was extended in 1939 and interest was deferred. In 1947, Society again acquired the property by deed of trust in lieu of foreclosure and released the mortgagor from its obligation on the related bond in return for the payment of $3,000 in cash to Society.

The property was appraised by an independent appraiser in 1947 and again on August 10, 1951, at a fair market value of $10,000. Society states that the property has been listed for sale since 1947 with brokers in Westchester County and in New York City numbering in all perhaps more than 100 brokers. No offer to purchase the property was received until within the last six months when a responsible person offered to purchase the property for a price between $2,000 and $3,000.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission in Washington, D. C.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after September 27, 1951, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in Rule N-5 of the rules and regulations promulgated under the act. Any interested person may, not later than September 25, 1951, at 5:30 p. m., e. d. s. t., submit to the Commission in writing his views or any additional facts bearing upon the application or the desirability of a hearing thereon, or request in writing that the Commission order a hearing be held thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C., and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact or law raised by the application which he desires to controvert.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 51-11117; Filed, Sept. 14, 1951; 8:48 a. m.]

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## UNITED STATES TARIFF COMMISSION

CLOTHESPIN MANUFACTURERS OF AMERICA

NOTICE OF INVESTIGATION

Upon application made August 22, 1951, by the Clothespin Manufacturers of America, Washington, D. C., the United States Tariff Commission on the 10th day of September, 1951, under the authority of section 7 of the Trade Agreements Extension Act of 1951, approved June 16, 1951, and section 332 of the Tariff Act of 1930, instituted an investigation to determine whether the product described below is, as a result, in whole or in part, of the duty or other customs treatment reflecting the concessions granted on such product under the General Agreement of Tariffs and Trade, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products.

Tariff Act of 1930:

| | *Description of product* |
|---|---|
| Par. 412 | Spring clothespins. |

*Inspection of application.* The application is available for public inspection at the office of the Secretary, United States Tariff Commission, Eighth and E Streets, N. W., Washington, D. C., and in the New York Office of the Tariff Commission, located in Room 437 of the Custom House, where it may be read and copied by persons interested.

I certify that the above investigation was instituted by the Tariff Commission on the 10th day of September 1951.

[SEAL] DONN N. BENT, *Secretary.*

[F. R. Doc. 51-11128; Filed, Sept. 14, 1951; 8:50 a. m.]

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## HOUSING AND HOME FINANCE AGENCY

### Federal Housing Administration

FIELD ORGANIZATION AND FINAL DELEGATIONS OF AUTHORITY

Section III, *Field organization and final delegations of authority,* is amended as follows:

1. Subparagraph (w) is added to paragraph III b 7 as follows:

(w) To approve the conveyance or other disposition by a Local Authority of excess land which becomes unnecessary to the operation of a project.

2. Subparagraph (t) is added to paragraph III b 8 as follows:

(t) To approve the conveyance or other disposition by a Local Authority of excess land which becomes unnecessary to the operation of a project.

Date approved: September 7, 1951.

[SEAL] JOHN TAYLOR EGAN, *Commissioner.*

[F. R. Doc. 51-11115; Filed, Sept. 14, 1951; 8:48 a. m.]

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## DEPARTMENT OF JUSTICE

### Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 18448]

FRANZ SCHÜTTE ET AL.

In re: Funds owned by Franz Schütte and others. F-28-31654, F-49-1559.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Franz Schütte, whose last known address is Bremen, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That Elsa V. Wedekind, whose last known address is Berlin W. 62, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

3. That Madeleine Weyhausen, nee Schütte, whose last known address is Leuchtenberg/Bremen, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

4. That the personal representatives, heirs, next of kin, legatees and distributees of St. C. Michaelsen, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

5. That the property described as follows: That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, in the amount of $101,234.63, represented by funds in that amount constituting a portion of and presently on deposit in an account maintained with said Bank in the name of N. V. Intra Internationale Financieele en Handelmaatschappij, Amsterdam, Holland, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

6. That to the extent that the persons named in subparagraphs 1, 2 and 3 hereof and the personal representatives, heirs, next of kin, legatees and distributees of St. C. Michaelsen, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 11, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
*Assistant Attorney General,*
*Director, Office of Alien Property.*

[F. R. Doc. 51-11162; Filed, Sept. 14, 1951; 8:51 a. m.]

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[Vesting Order 18449]

BRANDENBERG ELECTRIC POWER CO.

In re: Bank accounts owned by Brandenberg Electric Power Company, also known as Märkisches Elektrizitätswerk Aktiengesellschaft. D-28-10618-G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Brandenberg Electric Power Company, also known as Märkisches Elektrizitätswerk Aktiengesellschaft, the last known address of which is Keithstrasse 3, Berlin, W. 62, Germany, is a corporation, partnership, association or other business organization organized under the laws of Germany, and which has or, since the effective date of Executive Order 8389, as amended, has had its principal place of business in Berlin, Germany, and is a national of a designated enemy country (Germany);

2. That the property described as follows:

a. That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, in the amount of $360.00, as of March 28, 1946, arising out of cash held by the aforesaid, The Chase National Bank of the City of New York, as Trustee, for payment of coupons, maturing between November 1, 1930, and May 1, 1933, both dates inclusive, detached from and/or appurtenant to the Brandenberg Electric Power (Märkisches Elektrizitätswerk Aktiengesellschaft) First Mortgage Twenty-Five Year Sinking Fund 6 Percent Gold Bonds, External Loan of 1928, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same, less all lawful charges, by the said The Chase National Bank of the City of New York, against the said account, accrued or made and heretofore or hereafter licensed under Executive Order 8389, as amended,

b. That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, in the amount of $568.49, as of March 28, 1946, arising out of cash held by the aforesaid, The Chase National Bank of the City of New York, as Trustee, in a sinking fund account, entitled Brandenburg Electric Power (Märkisches Elektrizitätswerk Aktiengesellschaft) First Mortgage Twenty-five Year Sinking Fund 6 Percent Gold Bonds, External Loan of 1928, maintained at the aforesaid Bank, and any and all accruals thereto, and any and all rights to demand, enforce and collect the same, less all lawful charges, by the said The Chase National Bank of the City of New York, against the said account, accrued or made and heretofore or hereafter licensed under Executive Order 8389, as amended,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Brandenberg Electric Power Company, also known as Märkisches Elektrizitätswerk Aktiengesellschaft, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 11, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
*Assistant Attorney General,*
*Director, Office of Alien Property.*

[F. D. Doc. 51-11163; Filed, Sept. 14, 1951; 8:51 a. m.]

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[Vesting Order 18450]

GERMAN PROVINCIAL AND GERMAN BANKS

In re: Bank account owned by German Provincial and Communal Banks. F-28-9488-G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the German Provincial and Communal Banks, each of whose last known address is Germany, are corporations, partnerships, associations, or other business organizations, organized under the laws of Germany, and which have or, since the effective date of Executive Order 8389, as amended, has had their principal places of business in Germany, and are nationals of a designated enemy country (Germany);

2. That the property described as follows: That certain debt or other obligation of Old Colony Trust Company, 45 Milk Street, Boston, Mass., in the amount of $1,251.25, as of February 7, 1946, arising out of cash held by the aforesaid, Old Colony Trust Company, as Interest Paying Agent and Trustee, for payment of coupons, maturing between December 1, 1929 and June 1, 1933, both dates inclusive, detached from and/or appurtenant to the Consolidated Agricultural Loan of German Provincial and Communal Banks Secured Sinking Fund Gold Series A 6½ Percent Bonds, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same, less all lawful charges, by Old Colony Trust Company, against the said account, accrued or made and heretofore or hereafter licensed under Executive Order 8389, as amended,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, German Provincial and Communal Banks, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 11, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
*Assistant Attorney General,*
*Director Office of Alien Property.*

[F. R. Doc. 51-11164; Filed, Sept. 14, 1951; 8:51 a. m.]

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[Vesting Order 18451]

CITY OF NUREMBERG

In re: Debt owing to City of Nuremberg. D-28-10629-G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the City of Nuremberg, is a political subdivision of a designated enemy country (Germany);

2. That the property described as follows:

a. That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, in the amount of $30.00 as of March 28, 1946, arising out of cash held by the aforesaid, The Chase National Bank of the City of New York, as Fiscal Agent, for payment of an unpresented coupon, maturing on February 1, 1933, detached from and/or appurtenant to the City of Nuremberg External Twenty-Five Year 6 Percent Sinking Fund Gold Bonds, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same, less all lawful charges, by the said The Chase National Bank of the City of New York, against the said account, accrued or made and heretofore or hereafter licensed under Executive Order 8389, as amended, and

b. That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, in the amount of $324.19, as of March 28, 1946, arising out of cash held by the aforesaid, The Chase National Bank of the City of New York, as Fiscal Agent, in a sinking fund account, entitled City of Nuremberg External Twenty-Five Year 6 Percent Sinking Fund Gold Bonds, maintained at the aforesaid Bank, and any and all accruals thereto, and any and all rights to demand, enforce and collect the same, less all lawful charges, by the said The Chase National Bank of the City of New York, against the said account, accrued or made and heretofore or hereafter licensed under Executive Order 8389, as amended,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid designated enemy country (Germany);

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The term "designated enemy country" as used herein shall have the meaning prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 11, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
*Assistant Attorney General,*
*Director, Office of Alien Property.*

[F. R. Doc. 51-11165; Filed, Sept. 14, 1951; 8:52 a. m.]

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[Vesting Order 18453]

WILHELM HEINRICH GEORG DOHSE, ET AL.

In re: Rights of Wilheim Heinrich Georg Dohse, et al., under insurance contract. File No. F-28-26788-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Wilhelm Heinrich Georg Dohse whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees and distributees, names unknown, of Wilhelm Heinrich George Dohse, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That the net proceeds due or to become due under a contract of insurance evidenced by Policy No. 204125 issued by the West Coast Life Insurance Company, San Francisco, California, to Wilhelm Heinrich Georg Dohse, and any and all other benefits and rights of any kind or character whatsoever under or arising out of said contract of insurance except those of the aforesaid West Coast Life Insurance Company together with the right to demand, enforce, receive and collect the same is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

4. That to the extent that the person named in subparagraph 1 hereof and the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees and distributees, names unknown, of Wilhelm Heinrich Georg Dohse, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 11, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
*Assistant Attorney General,*
*Director, Office of Alien Property.*

[F. R. Doc. 51-11167; Filed, Sept. 14, 1951; 8:52 a. m.]

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[Vesting Order 18452]

PRUSSIAN ELECTRIC CO.

In re: Interest and sinking fund accounts owned by Prussian Electric Company, also known as Preussische Elektrizitäts Aktiengesellschaft. D-28-7642-G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Prussian Electric Company, also known as Preussische Elektrizitäts Aktiengesellschaft, the last known address of which is Fasanenstrasse 7-8, Charlottenburg 2, Berlin, Germany, is a corporation, partnership, association or other business organization, organized under the laws of Germany, and which has or, since the effective date of Executive Order 8389, as amended, has had its

principal place of business in Berlin, Germany, and is a national of a designated enemy country (Germany);

2. That the property described as follows:

a. That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, in the amount of $60.00 as of March 28, 1946, arising out of cash held by the aforesaid, The Chase National Bank of the City of New York, as Paying and Sinking Fund Agent, for payment of coupons, maturing August 1, 1931 and prior thereto, detached from and/or appurtenant to the Prussian Electric Company (Preussische Elektrizitäts Aktiengesellschaft) 6 Percent Sinking Fund Gold Debentures, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same, less all lawful charges, by the said The Chase National Bank of the City of New York, against the said account, accrued or made and heretofore or hereafter licensed under Executive Order 8389, as amended, and

b. That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, in the amount of $337.33, as of March 28, 1946, arising out of cash held as a sinking fund for the retirement of bonds of Prussian Electric Company (Preussische Elektrizitats Aktiengesellschaft) 6 Percent Sinking Fund Gold Debentures, by the aforesaid The Chase National Bank of the City of New York, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same, less all lawful charges, by the said The Chase National Bank of the City of New York, against the said account, accrued or made and heretofore or hereafter licensed under Executive Order 8389, as amended,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Prussian Electric Company, also known as Preussische Elektrizitats Aktiengesellschaft, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 11, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
*Assistant Attorney General,*
*Director, Office of Alien Property.*

[F. R. Doc. 51-11166; Filed, Sept. 14, 1951; 8:52 a. m.]

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[Vesting Order 18455]

MINEKI AND SHIGENO HONDA

In re: Rights of Mineki Honda and of Shigeno Honda under insurance contract. File No. D-39-4100-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Mineki Honda and Shigeno Honda whose last known address is Japan, are residents of Japan and nationals of a designated enemy country (Japan);

2. That the net proceeds due or to become due under contract of insurance evidenced by Policy No. WS-118140 issued by the California-Western States Life Insurance Company, Sacramento, California to Mineki Honda, together with the right to demand, receive and collect said net proceeds, is property within the United States, owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Mineki Honda or Shigeno Honda, the aforesaid nationals of a designated enemy country (Japan);

and it is hereby determined:

3. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 11, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
*Assistant Attorney General,*
*Director, Office of Alien Property.*

[F. R. Doc. 51-11169; Filed, Sept. 14, 1951; 8:52 a. m.]

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[Vesting Order 18454]

FRANZ FREDRICH

In re: Rights of Franz Fredrich under insurance contract, File No. F-28-31506-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Franz Fredrich whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under contract of insurance evidenced by Policy No. 78588964 issued by the Prudential Insurance Company of America, Newark, New Jersey, to Heinz Fredrich, together with the right to demand, receive and collect said net proceeds, is property within the United States, owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Franz Fredrich, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 11, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
*Assistant Attorney General,*
*Director, Office of Alien Property.*

[F. R. Doc. 51-11163; Filed, Sept. 14, 1951; 8:52 a. m.]